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The Guide to Islamic Economics, Banking, and Finance

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THE GLOBAL UNIVERSITY IN ISLAMIC FINANCE (INCEIF)

The Guide to Islamic Economics, Banking, and Finance

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ABSTRACT

A full array of frequently asked questions and their Shari'ah approved answers in today's modern Islamic Economics, Finance, and Banking.

KEYWORDS

Musharakah, Sukuk, Musharakah, Murabahah, Ijarah, bequest, Waqf, Contracts, Sale, Leasing, Islamic Economics, Islamic Banking, Islamic Finance

MUSHARAKAH QUESTIONS

(1) What guidelines are to be followed in the event of loss, damage or theft before the distribution of capital among partnership?

In the event of loss, damage or theft before capital is distributed among the partnership or before partners invest their capital, the partnership is cancelled and, if so agreed, renewed; because the loss occurs before mixing capital, partners sustain losses individually

(2) Is it permissible for partners to charge expenses to the Musharakah by estimating the expenses as a percentage of the capital?

It is not permissible to charge expenses to a Musharakah based on the capital invested. Rather, expenses may only be charged in accordance with prevalent market prices.

(3) Must profit shares be proportionate to investment amounts, as is the case with the shares of losses?

Profit shares need not be proportionate to investment amounts and may reflect varying amounts of time, effort and risk undertaken by different partners, but silent partners may not take a greater percentage than their investment amount, though they may take less.

For example, two working partners each provide 50% of the capital, and one may take 60% of the profits while the other takes 40%. If one partner were to remain silent having provided 50% of the capital, he may take up to, but not more than 50% of the profits.

(4) One of the partners promises to bring her capital to a halal farming business, without having specified the quantity, and an exact date the capital will be brought into the business, but would like to share in profits and losses immediately?

It would be invalid for her to do so, without having specified the quantity of the capital, and the exact date it will be brought into the business.

(5) In case of a partner's death, can heirs of the deceased continue the Musharakah?

Yes. The heirs of the deceased are entitled to remain partners in the Musharakah if they decide not to liquidate their share and exit the Musharakah, though the remaining Musharakah partners are entitled to purchase the share.

(6) Is it permissible for a Musharakah to accept a person as partner in exchange of liabilities owed to that person?

It is not permissible for a partner to be admitted in exchange for money owed to him. Investment in a Musharakah may only be made in either cash or kind. Debts may not be converted into capital.

(7) How does one finance the purchase of a home using Diminishing Musharakah?

Two partners, one a client and the other a financier, buy a home for \$100,000. The client makes a deposit of \$10,000 and lives in the home, while the financier invests \$90,000. We assume that the two agree to the client paying a monthly rent as a percentage of the financier's share. It is also agreed that every six months the client buys \$10,000 of the financier's share.

The rent can be pegged as a percentage where the rent is calculated as 1% of the financier's share, or some other amount that reflects the client's increasing ownership. After 54 months, or four and a half years, the client owns the house entirely.

(8) Is it permissible to contract a Musharakah for construction of property, where the client share is the value of land he owns and the bank's share is the value of the building to be constructed? Furthermore, is it permissible to contract an agreement that the bank will sell its shares to the client upon completion of the contract and that the client will be appointed contractor for the project?

It is permissible to enter into a Musharakah contract for construction on the property that is in the ownership of the client. The client's share in the Musharakah will be equal to the value of the land while the bank's share will be equal to the value of the building to be constructed.

It is further permissible that both parties agree that the bank will sell its share of the Musharakah to the client upon completion of the project, making the client the sole owner of the land and building. Both parties may also agree to appoint either one of them—in this case, the client—as contractor for the purpose of construction, provided that such a contract will be completely independent and separate from the Musharakah contract.

(9) What are the basics of the mixing of capital in a Musharakah arrangement?

Capital may be mixed or left unmixed between partners when invested. It is valid if partners decide to mix the capital by holding a joint account, or leave it unmixed by holding separate bank accounts. However, it will be invalid if two partners, both acting as managers, deposit capital into a pool but only one of them is allowed access.

Non-fungible, unmixed capital should not be divided until all the partners (or their representatives) are present, though mixed capital or fungible, unmixed capital may be divided in the partners' absence.

(10) After the distribution of capital among partnership?

In the event of loss, damage or theft after capital is distributed among the partnership, partners share in the loss in proportion to their partnership stake; though for unmixed capital, only the partner whose capital is lost, damaged or stolen is responsible.

(11) Will the purchase of machinery for a running business be considered a partnership for assuming ownership or one for trade?

If a commercial enterprise wishes to purchase a machine for using it in its business activity and not for sale, the Diminishing Musharakah that will be executed for it will fall into the category of a partnership for assuming ownership and not a partnership for trade.

(12) Is it permissible to account for a Musharakah in the way that conventional banks account for their financing, which would consist of operating an account with debits and credits, and netting these off at the end of the period to arrive at either profit or loss?

It will not be permissible to account for a Musharakah in the same manner as conventional banks account for their financing, for the latter is debt-based and the former is equity-based. The method described in the question is not permissible.

(13) Is it permissible to hold a partner in a Musharakah personally liable for a transaction entered into on that partner's recommendation or judgment in case the Musharakah suffers a loss due because of the transaction?

In such a case, it will be determined whether the partner exercised due care and diligence. If the partner made a gross error in judgment or did not take due precautions, he will be held responsible.

If the partner omitted consultation with an expert for a transaction that is ordinarily referred to experts, the partner will be held liable.

If however, the shortcoming in the transaction was undetectable, or if the transaction was prudent at the time it was entered into, the partner may not be held liable and the Musharakah will bear the loss.

(14) In a Musharakah that is managed by a single partner is it permissible to make this partner liable for administrative expenses of the Musharakah in return for a certain fee in consideration of his management?

It is not permissible to make one of the partners liable for the expenses of the Musharakah. Such expenses will be charged to the Musharakah in actual, whenever possible, or a reasonable estimate.

(15) Of what form should the capital investment be?

Capital investment may be contributed in cash, in kind, or a mix of both to be used in the business, in which case the in kind asset's market value is assessed and agreed upon, forming the contributing partner's share in the business.

(16) In the case of a Musharakah contracted for the purpose of financing the purchase of property, is it permissible to make the partner who will be the eventual owner liable to bear registration and other ancillary expenses?

It is permissible to make such a partner liable to bear registration charges and other ancillary expenses in light of the fact that such a partner will be the eventual owner of the property.

(17) What is meant by Shirkah tul Aa'maal? How does it work in practice?

Shirkah tul Aa'maal is a partnership in services. Under Shirkah tul Aa'maal, two or more individuals enter into a partnership to provide a service. While there may or may not be an initial capital contribution to determine the size of the partners' share, an agreed-upon ratio determines how profits distribute.

For example, ten partners enter into an agreement to publish a magazine. The six freelance writers and four full-time managers may decide to distribute profits so that writers receive 8% each of profits and the managers receive 13% each of profits.

In a service partnership partners may act on behalf of one another as agreed upon (e.g. buying, selling, managing, etc.) and no partner may refuse participation in the provision of agreed upon services.

(18) Is it permissible for a bank to contribute letters of surety as its share of investment in Musharakah?

It is not permissible for the bank to consider letters of surety as investment in Musharakah. Musharakah capital may take only two forms: cash and in-kind investments.

(19) What is the method of home financing under a Diminishing Musharakah?

Home financing under Diminishing Musharakah is as follows:

The bank and the client contract a Musharakah agreement under which the property is purchased, with each party contributing a specified percentage of funds. The bank subsequently sells its share of the property to the client in installments spread over a number of years.

The bank's earnings will be accounted for yearly and will be calculated on the basis of usufruct of its share of the property that is in the client's use. In case of default by the client, the bank will have the option of either selling the property in order to realize its share in the investment, or annulling the transaction.

(20) Is it permissible for a Musharakah to accept a person as partner in exchange of liabilities owed to that person?

It is not permissible for a partner to be admitted in exchange for money owed to him. Investment in a Musharakah may only be made in either cash or kind. Debts may not be converted into capital.

(21) Is it permissible for a client of a bank to contribute his share of investment in a Musharakah by means of a Murabaha, while the bank makes its investment in cash?

It is not permissible for a client to contribute his share of investment in the Musharakah by means of a Murabaha. It is a condition for a valid Musharakah that both parties make investment in either cash or in-kind, whereas a Murabaha is a sale transaction. In such a case, the bank will be considered the sole investor, with all investment yields accruing to it alone. The Murabaha transaction, if entered into with the client, will be kept entirely separate from Musharakah.

(22) In case of a partner's death, can heirs of the deceased continue the Musharakah?

Yes. The heirs of the deceased are entitled to remain partners in the Musharakah if they decide not to liquidate their share and exit the Musharakah, though the remaining Musharakah partners are entitled to purchase the share

(23) May one of the partner's willingly agree to bear all the losses?

It is impermissible for any partner to bear all losses, even if done so willingly, unless there is negligence.

(24) Is it permissible to hold a partner in a Musharakah personally liable for a transaction entered into on that partner's recommendation or judgment in case the Musharakah suffers a loss due because of the transaction?

In such a case, it will be determined whether the partner exercised due care and diligence. If the partner made a gross error in judgment or did not take due precautions, he will be held responsible.

If the partner omitted consultation with an expert for a transaction that is ordinarily referred to experts, the partner will be held liable.

If however, the shortcoming in the transaction was undetectable, or if the transaction was prudent at the time it was entered into, the partner may not be held liable and the Musharakah will bear the loss.

(25) After the distribution of capital among partnership?

In the event of loss, damage or theft after capital is distributed among the partnership, partners share in the loss in proportion to their partnership stake; though for unmixed capital, only the partner whose capital is lost, damaged or stolen is responsible.

(26) Is it permissible to enter into a Musharakah with a conventional bank?

It is permissible to enter into a Musharakah with a conventional bank, provided that the business conducted is lawful in the Shariah and no impermissible transactions are entered into.

(27) What is a Musharakah agreement?

A Musharakah agreement creates a partnership of shared capital, management and risk in which partners share profit according to an agreed upon percentage, and share loss according to the proportion of their initial capital investment.

Musharakah are a kind of Shirkah, or sharing, agreement. Shirkahs are of different kinds of which Musharakahs are one. Musharakahs enjoy greater popularity among the class of Shirkah products because the Muslim investor increasingly seeks a means to share in a joint commercial enterprise with capital, rather than with more traditional forms of partnership.

(28) In case of a Musharakah contract, is it permissible for the bank to require the client to submit guarantees?

Each partner in a Musharakah has the right to make use of the collective funds of the Musharakah in a way that is of benefit to partners. Therefore, in general, no partner may be held liable for any loss that accrues from a transaction that partner entered into, unless it is established that the partner acted with negligence or committed fraud.

Therefore, the bank may require a guarantee from its client but only to the extent of fraud or negligence on the part of the client. In pursuance of such a guarantee, it will be permissible for a bank to require collateral from its client, provided that the collateral will remain in the possession of the client, with the bank having a claim on it.

(29) What are some of the factors that render the Musharakah terminated for a partner?

Among the partners, death, insanity and incapacity to conduct business render the Musharakah terminated for that person.

(30) Is it permissible to contract a Musharakah for construction of property, where the client share is the value of land he owns and the bank's share is the value of the building to be constructed? Furthermore, is it permissible to contract an agreement that the bank will sell its shares to the client upon completion of the contract and that the client will be appointed contractor for the project?

It is permissible to enter into a Musharakah contract for construction on the property that is in the ownership of the client. The client's share in the Musharakah will be equal to the value of the land while the bank's share will be equal to the value of the building to be constructed.

It is further permissible that both parties agree that the bank will sell its share of the Musharakah to the client upon completion of the project, making the client the sole owner of the land and building. Both parties may also agree to appoint either one of them—in this case, the client—as contractor for the purpose of construction, provided that such a contract will be completely independent and separate from the Musharakah contract.

SUKUK QUESTIONS

(31) What are Salam Sukuk?

The Salam is a sale for which the price is paid in full for goods to be delivered at a future date.

Holders of the Salam Sukuk are owners of the Salam goods and are entitled to receive income generated from their sale or the sale of Salam certificates.

It is prohibited to trade Salam Sukuk during the term of the Salam as the underlying asset is a debt that is created based on an advance payment of the sales price.

(32) What are the different forms of Ijarah Sukuk?

Sukuk may be issued for the following Ijarah categories:

- Sukuk for the transfer of ownership of the leased asset.
- These Sukuk are issued for the eventual transfer of ownership of the leased asset to the lessee at the end of the period of lease.
- Sukuk for the ownership of the usufruct of an asset.
- These are issued with the aim of leasing the asset so that the holder of the Sukuk becomes the owner of the usufruct of the asset.
- Sukuk for the ownership of services.

- The purpose of these Sukuk is to provide services so that the holder of the Sukuk becomes the owner of these services.
- Ijarah Sukuk can be traded at market price or any other price mutually agreed upon by the lessor and the lessee.

(33) What are Musharakah Sukuk?

These Sukuk are issued with the aim of using funds for the establishment of a new project, the development of an existing project or financing a business activity on the basis of a partnership contract.

Every subscriber is given a Musharakah certificate which represents his proportionate ownership in the Musharakah asset. This certificate can be bought and sold in the market. The profit in a Musharakah is shared according to an agreed ratio whereas loss is shared in proportion to the ratio of investment.

A Takaful reserve is created for the Musharakah to mitigate the risk of loss to Sukuk holders.

(34) What minimum percentage of a Sukuk must be fixed assets?

If the Sukuk represent a combination of fixed and liquid assets, it is imperative that the fixed assets make up for at least 10% of the entire business.

(35) What is the definition of Sukuk?

Sukuk is an Arabic term and a plural of the word Sakk which means 'certificate'. Sukuk are defined as certificates of equal value representing undivided shares in ownership of tangible assets, usufruct and services.

Sukuk may be issued for various Islamic banking products such as Ijarah, Musharakah, Murabaha, Salam and Istisna.

(36) What are Diminishing Musharakah Sukuk?

These Sukuk represent the proportionate share of partners in the joint ownership of an asset. The financial institution or investor leases and gradually transfers its share of ownership of the asset to the client.

The lessee uses the investor's share and by the end of the Musharakah, redeems and assumes ownership of it.

(37) Is it permissible to issue Sukuk for liquid assets?

It is permissible to issue Sukuk for liquid assets, however, they may only be sold on face value and not for a greater or lesser amount as that would constitute riba.

(38) What are Murabaha Sukuk?

The Murabaha is a sale in which the cost of acquiring the asset and the profit to be earned from it are disclosed to the client.

Murabaha Sukuk are issued for the purpose of financing the purchase of goods through the Murabaha so that the certificate holder becomes the owner of the Murabaha commodity.

Murabaha Sukuk cannot be sold or purchased in the secondary market.

IJARAH QUESTIONS

(39) Is it permissible for the lessor to receive advance rent for an Ijarah?

It is permissible for the lessor to receive advance rent for an Ijarah. The advance rental is called arbut and may be retained by the lessor if the lessee backs out of the lease agreement before the expiry of its term.

Although it is preferable that only the actual loss be made up for from the advance rent by calculating the difference between the rental received and the rental that would have been received had the lease remained effective.

(40) What are the rights of the lessee in case the lessor refuses to repair the defects in the leased asset?

The lessee has the right to rescind the Ijarah contract in case the lessor refuses to repair any defects in the leased asset that occurred either after the contract date or were existing at the contract date but were unknown to the lessee.

(41) What is the liability of contracting parties in case any defect is found in the leased asset?

A defect is defined as a compromise or diminishment of the usufruct. In such a case, the lessee has the option to rescind the contract. The lessee may, however, continue to use the usufruct provided he is paying the agreed-upon rentals.

(42) What is the status of advance payments in a contract of Ijarah involving the gradual sale of an asset to the lessee?

Advance payment by the lessee in such a contract is considered a trust which the lessee gives in order to convey his seriousness to fulfill his promise of purchasing the leased asset at the end of the lease term. It is not considered part of the rental payment. If allowed for in the contract, the lessor may keep this advance payment should the lessee fail to honor his promise.

(43) Is it permissible to make an Ijarah contingent on the occurrence of a future event?

It is not permissible to make the contract of Ijarah contingent on the occurrence of a future event. However, it is permissible to make specific provisions within the Ijarah contract contingent upon the behavior of either party. This entails, for example, that both parties may agree to reduce the rent in the event of early payments by the lessee.

(44) May the lessee sub-lease the leased property or service to a third-party?

The lessee may sub-lease the property or service to a third party with the lessor's permission.

In the Hanafi school the sub-lease may only be at a rate less than or equal to the original lease, though the lessee may charge a higher rent if, with the lessor's permission, he increases the property's value by developing it.

In the Shafi'i and Hanbali schools no such condition applies and the lessee may agree

any amount of rent with the sub-lessee, assuming the lessor permits sub-leasing.

(45) Is there any difference between an invalid Ijarah contract and a void Ijarah contract?

Islamic jurists have not differentiated between the two. A contract is prohibited if it does not fulfill the requirements of the Shariah, and prohibition necessitates non-existence of the contract. In an invalid or void contract, if the lessee benefits from the usufruct, or if time elapses during which the leased asset could have been utilized, the lessee pays equivalent rent, assessed as being the rent of similar usufruct.

(46) What is the liability of the lessee regarding damage to the leased asset?

The leased asset is in the possession of the lessee as a trust and damage resulting from the lessee's negligence is borne by the lessee.

(47) Is it permissible to pay Ijarah rentals in advance?

Advance payment of Ijarah rentals is permissible.

(48) May the owner put restrictions on the usage of the rented property or service?

The owner is entitled to specify how the property may or may not be used or the rented service conducted.

(49) May I create an Ijarah agreement of a consumable item?

The leased asset should not be a consumable item, like food, whose quantity reduces with consumption, but rather a durable, like machinery or property, whose market value might depreciate, but quantifiably remains the same.

(50) Is it permissible to lease to an interest-based bank so that it may open a branch?

A lease to a bank that is not Shariah-compliant must be avoided because such a lease would directly facilitate in an impermissible act, in this case interest-based banking.

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(51) Is it lawful for Islamic companies to lease equipment like airplanes and heavy machinery to other institutions for a certain period of time, i.e. ten years and then after two years, sell the equipment along with the leases to another company, all the while continuing to manage the equipment for the life of the leases, collecting the lease payments and delivering them to the new owners?

It is permissible for Islamic companies to purchase equipment that carries already concluded lease contracts for it.

The lease will continue for as long as was specified in the Ijarah agreement, which is a binding contract.

(52) When does the lease period begin?

The lease, which may even be fixed for a future date, commences with the delivery (and usability) of the leased property or service.

The first lessor is permitted to manage the equipment by collecting the payments from the lessee and guaranteeing that the lessee will honour his financial obligations.

(53) May the owner put restrictions on the usage of the rented property or service?

The owner is entitled to specify how the property may or may not be used or the rented service conducted.

(54) When does the contract of Ijarah come into effect?

Unless otherwise agreed, an Ijarah contract comes into effect immediately after the conclusion of the contract. It is permissible to defer an Ijarah to a future date agreed upon by both parties.

(55) Is it permissible for the lessor to contract an Ijarah with more than one lessee for the same asset?

It is permissible to lease the same asset to more than one lessee. If the lease terms are of identical duration, both lessees are entitled to utilize the usufruct during that period.

(56) How does a financial institution deal with default in an Ijarah?

Like all other Islamic financial contracts, a penalty for a default in payment cannot be enforced. It is permissible for the lessor to maintain a security or collateral which can be liquidated in order to recover any outstanding debt. The creditor is permitted to make up for direct and actual costs through this liquidation.

(57) The bank leases land for the purpose of building a branch office. The improvements on the land and the construction of the branch office require two years before it can be opened for. When is the bank required to begin lease payments on the land; from the time of possession or from the time the branch office is opened?

Payments are required from the lessee from the time of taking possession of the item leased from the lessor. In the case mentioned, payments will be due as soon as possession of the land is assumed by the lessee.

(58) What is the status of lease rentals due to the lessor at the time of the rescission of the contract?

The lessee is obliged to pay all lease rentals that were accrued up to the point of rescission, but not those outstanding after rescission.

(59) Is it permissible to lease something for a certain rate and then to sub-lease the same to another for a higher rate?

It is lawful to lease something for a certain amount and then sub-lease it to another for the same amount or for more or less so long as the lessor permits it.

Once the right to the usufruct passes from the first lessee's disposal by means of a later contract of lease it is no longer lawful for the first lessee to use what has passed from his ownership and become a debt owed to him by another.

(60) What is the responsibility of the lessor if a defect is found in the leased asset?

It is the responsibility of the lessor to undertake all necessary repairs that enable the lessee to make use of the asset in accordance with the terms of the Ijarah contract. Whether the defect occurred after the execution of the contract, or was present on the contract date unbeknownst to the lessee, is of no consequence.

(61) What is the maximum term of an Ijarah contract?

There is no maximum time limit for an Ijarah contract.

(62) When is the lessee liable for loss?

The lessee is responsible only for loss, damage or theft resulting from his own negligence, but not otherwise; it is improper for the lessee to make a general promise to pay for all loss, damage or theft before any even occurs, or to make such a promise after a loss, damage or theft occurs but when the cause is still unknown.

(63) Is it permissible for the lessee to sublet the leased asset?

It is permissible for the lessee to sub-lease the leased asset if the Ijarah contract does not prohibit it. The lessee is free to sublet at any rate, whether the same, higher, or lower.

(64) When is the Ijarah contract deemed to have terminated?

The Ijarah contract is deemed to have terminated either by the contractual terms, one of the party's rescission, or the termination of the possible usufruct of the leased asset through theft, destruction, or the like.

(65) Is it permissible to lease something for a certain rate and then to sub-lease the same to another for a higher rate?

It is lawful to lease something for a certain amount and then sub-lease it to another for the same amount or for more or less so long as the lessor permits it.

Once the right to the usufruct passes from the first lessee's disposal by means of a later contract of lease it is no longer lawful for the first lessee to use what has passed from his ownership and become a debt owed to him by another.

(66) What is the liability of contracting parties in case any defect is found in the leased asset?

A defect is defined as a compromise or diminishment of the usufruct. In such a case, the lessee has the option to rescind the contract. The lessee may, however, continue to use the usufruct provided he is paying the agreed-upon rentals.

(67) Is it valid to include in the Ijarah contract a promise from the lessee to purchase the leased asset at the end of the lease term?

A promise to purchase a leased asset should be kept independent of the contract of Ijarah. However, if done separately, it would be permissible to enter into this unilateral promise at the same time as the Ijarah.

(68) What recourse is available to the lessor if the lessee delays lease payments?

The lessor has the right to charge late payment fees. This charge may consist of an administrative charge and a late-payment penalty where administrative charges are the right of the lessor while the late-payment penalty is paid to a designated charity.

(69) Is it permissible for the lessor to charge the lessee with the insurance of the leased asset?

It is permissible for the lessor to include a clause in the Ijarah contract making the lessee responsible for insuring the leased asset.

(70) What should a lessor do upon becoming aware of a lessee's intention to utilize a leased asset for unlawful purposes?

If the lessor becomes aware of a lessee's intention to utilize a leased asset in unlawful ways, he should rescind the contract. Any rental payments earned before rescission are lawful for him to accept, while all subsequent rentals are unlawful. However, if the core purpose of the Ijarah contract is lawful—such as leasing a car—the Ijarah is not rendered unlawful by any sins on the part of the lessee.

(71) Is it lawful for the lessor to demand payment before delivering the leased asset to the lessee?

It is not lawful for the lessor to demand any payment from the lessee before the asset of lease is delivered to him and he is able to benefit from its usufruct.

(72) Is it lawful for the bank to sell leased equipment and supplies to a new buyer who will continue to honour the lease concluded between the bank and the lessee?

It is lawful for the bank to sell the leased equipment and supplies to a new buyer since doing so does not affect the lease contract.

Ownership of the usufruct is transferred by way of a lease whereas ownership in the object or corpus is transferred by way of a sale contract; each is separate and independent of the other.

It must be ensured however that the sale does not affect the rights of the original lessee in any way

(73) Is it permissible for the lessor to rescind the Ijarah contract in case of damage or theft of the leased asset?

The lessor reserves the right to rescind the Ijarah contract in case of excessive damage to or theft of the leased asset.

(74) How is the liability for damage distributed between the lessor and the lessee in an Ijarah agreement?

The lessee is liable for damage to the property caused by wear and tear, and other factors within the lessee's control while the lessor is liable for damage resulting from ownership, barring lessee negligence.

(75) Is it permissible for the bank to lease automobiles to a company for a specified period of time on the condition that half the ownership of the automobiles will revert to the company after the lease period has been completed?

It is permissible for the bank to lease automobiles to the company however to revert half the ownership of the cars to the lessee company after completion of the lease period is subject to rules concerning the promise to purchase.

A new sales contract, separate and independent of the previous lease agreement, must be entered into in the event that the cars are to be sold.

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(76) What is the liability of contracting parties in case any defect is found in the leased asset?

A defect is defined as a compromise or diminishment of the usufruct. In such a case, the lessee has the option to rescind the contract. The lessee may, however, continue to use the usufruct provided he is paying the agreed-upon rentals.

(77) Is it permissible for the lessor to charge the lessee with the insurance of the leased asset?

It is permissible for the lessor to include a clause in the Ijarah contract making the lessee responsible for insuring the leased asset.

(78) What are the ways by which the leased asset may be transferred to the lessee?

If a transfer of ownership is to take place at the end of an Ijarah, a document separate and independent of the Ijarah contract must be prepared.

The transfer of ownership may take place in one of the following three ways:

- 1) The lessee may undertake to buy the asset at the end of the period of lease for a certain amount that is mutually decided between both parties at the beginning of the contract. This amount may be the actual cost of the asset or any other nominal value.
- 2) The lessor may undertake to gift the asset to the lessee at the end of the Ijarah period.
- 3) The lessee may even purchase the asset during the period of the lease by making a complete payment of all the rentals owed by him or alternatively, the lessor may allow the lessee to purchase the asset at its market value.

(79) Is it valid to have multiple Ijarah contracts for a single leased asset? What is the status of such contracts?

It is permissible for contracting parties to draw multiple, concurrent, independent and periodical Ijarah contracts for the same leased asset, without any one being contingent on the other. Only the first contract is binding upon both parties. The subsequent contracts are considered supplementary and may be rescinded unilaterally.

(80) Is it permissible for the lessee to sublet the leased asset?

It is permissible for the lessee to sub-lease the leased asset if the Ijarah contract does not prohibit it. The lessee is free to sublet at any rate, whether the same, higher, or lower.

(81) What is the status of lease rentals due to the lessor at the time of the rescission of the contract?

The lessee is obliged to pay all lease rentals that were accrued up to the point of rescission, but not those outstanding after rescission.

(82) In case of late payment, can the lessor charge the lessee a penalty?

If the lessee is late in paying rentals, the lessor may not gain any benefit from a penalty, because the money becomes a debt, and any receipt in excess of a debt is riba. Rather, the contract may stipulate that in the event of delayed payment, the lessee must pay a certain amount to a specified charity.

(83) What are the obligations of the lessee regarding the usage of the leased asset?

The lessee should utilize the leased asset according to the customary practice by which similar assets are used. He should take all measures to preserve it from any damage or defect. The lessee is entitled to derive benefit from the usufruct in the manner provided for in the contract. The lessee may not utilize the usufruct in a manner that is beyond the scope of the Ijarah contract.

(84) Is it valid to include in the Ijarah contract a promise from the lessee to purchase the leased asset at the end of the lease term?

A promise to purchase a leased asset should be kept independent of the contract of Ijarah. However, if done separately, it would be permissible to enter into this unilateral promise at the same time as the Ijarah.

(85) May the owner put restrictions on the usage of the rented property or service?

The owner is entitled to specify how the property may or may not be used or the rented service conducted.

(86) Is it lawful for the lessor to demand payment before delivering the leased asset to the lessee?

It is not lawful for the lessor to demand any payment from the lessee before the asset of lease is delivered to him and he is able to benefit from its usufruct.

(87) What is a time-share leasing contract and is it permissible?

A time-share lease contract is a permissible leasing structure where the lessor leases the same asset to multiple lessees for different time-periods, with none of the time periods overlapping with one another.

(88) When is the lease agreement cancelled?

The lease agreement is cancelled if:

- 1) The tenant or the owner passes away;

- 2) The tenant or the owner agree to cancellation;
- 3) The property or service rented out is of unacceptably low quality.

(89) May ijarah rental payments be made in kind?

Similar to a regular sale transaction, ijarah rental payments may be made in cash or in kind. Any valid consideration in a contract of sale may be agreed upon as rent in a contract of ijarah.

(90) Whose responsibility is it to pay for any legally required insurance and who is entitled to receiving any payout from the insurer?

The lessor is obligated to pay any legally required insurance on the leased property; any payout by the insurer should go to the lessor and the net amount (i.e. total payout less total premiums paid) should be given away in charity to avoid riba.

(91) Is the lessee obliged to pay lease rentals if the usufruct does not meet expectations?

The lessee is obliged to pay lease rentals as long as the usufruct of the leased asset is at his disposal. However, he reserves the right to rescind the contract in the event that the usufruct does not comply with the terms of the ijarah contract, after which no monthly rentals are due.

(92) Is it permissible for the owner of a jointly-owned asset to lease the asset to his co-owner?

It is permissible for a co-owner to lease his share of the jointly-owned asset to another co-owner or to a third party.

(93) What is the status of advance payments in a contract of ijarah involving the gradual sale of an asset to the lessee?

Advance payment by the lessee in such a contract is considered a trust which the lessee gives in order to convey his seriousness to fulfill his promise of purchasing the leased asset at the end of the lease term. It is not considered part of the rental payment. If allowed for in the contract, the lessor may keep this advance payment should the lessee fail to honor his promise.

(94) What is the status of lease rentals due to the lessor at the time of the rescission of the contract?

The lessee is obliged to pay all lease rentals that were accrued up to the point of rescission, but not those outstanding after rescission.

(95) Is the Ijarah of an asset permissible when it does not provide any utility independently but is only used in conjunction with another asset?

It is permissible to lease assets that are not capable of giving benefit as independent units – such as machinery parts which do not function independent of the machine they belong to. However, if the lease is one that ends in ownership (Ijarah Muntahia Bittamleek), it would not be permissible to lease such assets.

(96) What is the obligation of the lessor to deliver the leased asset?

The lessor is obliged to deliver the asset and all associated leased items necessary to transfer the usufruct to the lessee and leave it to the lessee's disposal until the end of the lease term. Any accident that hampers the lessee from utilizing the usufruct—not being an accident caused by the lessee—must be corrected by the lessor.

(97) Under what circumstances may the lessor exercise his right to withhold the leased asset?

The lessor is entitled to withhold the leased asset if the lessee delays payment, as long as the benefit from the usufruct of the property or the execution of services has already occurred, unless parties on both sides agree.

(98) What is the Shariah ruling in regard to leasing real estate to supermarkets, restaurants, hotels or tourist shops whose products may include Islamically prohibited items?

If the purpose of the lease is purely prohibited, like a bar or a nightclub, then the lease contract is prohibited because the subject of the contract itself is prohibited.

It is lawful, however, to lease property to a business concern whose primary business is in lawful goods and services even if it is to a lesser degree supplemented by income from unlawful goods and services.

(99) Is it permissible to lease something for a certain rate and then to sub-lease the same to another for a higher rate?

It is lawful to lease something for a certain amount and then sub-lease it to another for the same amount or for more or less so long as the lessor permits it.

Once the right to the usufruct passes from the first lessee's disposal by means of a later contract of lease it is no longer lawful for the first lessee to use what has passed from his ownership and become a debt owed to him by another.

(100) Is it permissible to include a clause in an Ijarah contract that makes the lessee liable to pay all remaining rentals in the event of rescission?

It is impermissible to include any clause that forces the lessee to pay all remaining rentals in the event of rescission. The proper procedure is to either continue with the contract until the end of the stipulated lease term or for the lessor to approve rescission, take back possession of the leased asset and relinquish claims to any further lease rentals.

(101) What is the Shariah ruling with regard to the lease of property to companies or institutions whose primary business is transacting by means of interest?

It is unlawful for a Muslim to aid in the impermissible, and leasing property to a company whose primary business is interest-based would be considered impermissible.

(102) May the lessee sub-lease the leased property or service to a third-party?

The lessee may sub-lease the property or service to a third party with the lessor's permission. In the Hanafi school the sub-lease may only be at a rate less than or equal to the original lease,

though the lessee may charge a higher rent if, with the lessor's permission, he increases the property's value by developing it.

In the Shafi'i and Hanbali schools no such condition applies and the lessee may agree any amount of rent with the sub-lessee, assuming the lessor permits sub-leasing.

(103) Is it lawful for the lessor to promise the lessee to gift him the leased asset on condition that the lease is paid in full?

It is lawful in an Ijarah to promise to make a gift of the leased asset to the lessee when the lease expires on condition that all payments are made in their entirety.

(104) Is it valid to include in the Ijarah contract a promise from the lessee to purchase the leased asset at the end of the lease term?

A promise to purchase a leased asset should be kept independent of the contract of Ijarah. However, if done separately, it would be permissible to enter into this unilateral promise at the same time as the Ijarah.

(105) Is the Ijarah of an asset permissible when it does not provide any utility independently but is only used in conjunction with another asset?

It is permissible to lease assets that are not capable of giving benefit as independent units – such as machinery parts which do not function independent of the machine they belong to. However, if the lease is one that ends in ownership (Ijarah Muntahia Bittamleek), it would not be permissible to lease such assets.

(106) Is it permissible for the bank to lease automobiles to a company for a specified period of time on the condition that half the ownership of the automobiles will revert to the company after the lease period has been completed?

It is permissible for the bank to lease automobiles to the company however to revert half the ownership of the cars to the lessee company after completion of the lease period is subject to rules concerning the promise to purchase.

A new sales contract, separate and independent of the previous lease agreement, must be entered into in the event that the cars are to be sold.

(107) What is the Shariah perspective with regard to the bank leasing out shares in projects to its investors in return for a variable monthly or yearly lease?

The Shariah permits the bank to lease out its shares in projects to its investors in return for a variable monthly or yearly lease so long as it is against tangible assets such as real estate and equipment.

The bank must also ensure its understanding of the principles of lease and the benefit it may gain by making the monthly or yearly rent variable.

(108) What is a floating rental and what are the pre-requisites for charging it?

A floating rental in an Ijarah refers to charging different rentals for different periods within the term of an Ijarah contract based on a well known and acknowledged standard or benchmark. In order to float rentals:

- The rent for the first period must be known. For instance, in the case of a 5 year lease for which the rent is to be paid quarterly, the rent for the first quarter must be known. Rent for subsequent periods may be set as floating rentals.
- The floating rental must be linked to a well known and appropriate benchmark and should be subject to a floor and a cap. For example the floor may be set at 9% and the cap at 18%. The rent may be allowed to float within these two limits.
- The rent based on the benchmark, must be decided at the beginning of each period, not at its end.
- It may be that during the period of lease, the benchmark ceases to be a reference any more as a result of a shift in market preference. In order to deal with such a situation, it is decided at the time of the agreement that in such a case, a new benchmark will apply.

(109) What are the rights of the lessee in case the lessor refuses to repair the defects in the leased asset?

The lessee has the right to rescind the Ijarah contract in case the lessor refuses to repair any defects in the leased asset that occurred either after the contract date or were existing at the contract date but were unknown to the lessee.

(110) Is it permissible to include a clause in an Ijarah contract absolving the lessor of all responsibilities towards the leased asset such as maintenance?

It is not permissible to include provisions in an Ijarah contract that absolve the lessor from his responsibilities towards the leased asset.

(111) When is the Ijarah contract deemed to have terminated?

The Ijarah contract is deemed to have terminated either by the contractual terms, one of the party's rescission, or the termination of the possible usufruct of the leased asset through theft, destruction, or the like.

(112) What is the ruling with regard to the bank purchasing a leased asset?

It is permissible for the bank to purchase a leased asset that is already under lease.

The bank as the new owner assumes the responsibility of the owner's share of the maintenance which includes everything essential to the running condition of the leased item so that the usufruct it was contracted for remains available to the lessee.

(113) Is it lawful for the bank to sell leases considering these contracts represent financial rights?

It is not lawful for the bank to sell leases because it does not own the right to the usufruct of the leased goods which is the financial right possessed by the lessee during the period of the lease.

(114) Is it lawful for Islamic companies to lease equipment like airplanes and heavy machinery to other institutions for a certain period of time, i.e. ten years and then after two years, sell the equipment along with the leases to another company, all the while continuing to manage the equipment for the life of the leases, collecting the lease payments and delivering them to the new owners?

It is permissible for Islamic companies to purchase equipment that carries already concluded lease contracts for it.

The lease will continue for as long as was specified in the Ijarah agreement, which is a binding contract.

The first lessor is permitted to manage the equipment by collecting the payments from the lessee and guaranteeing that the lessee will honour his financial obligations.

(115) What is the obligation of the lessor to deliver the leased asset?

The lessor is obliged to deliver the asset and all associated leased items necessary to transfer the usufruct to the lessee and leave it to the lessee's disposal until the end of the lease term. Any accident that hampers the lessee from utilizing the usufruct—not being an accident caused by the lessee—must be corrected by the lessor.

(116) What is the liability of the lessor regarding defects in the leased asset existing on the contract date and known to the lessee?

The lessor is not obliged to repair any defects existing on the contract date and known to the lessee unless stipulated otherwise in the Ijarah contract.

(117) What is the liability of the lessee regarding damage to the leased asset?

The leased asset is in the possession of the lessee as a trust and damage resulting from the lessee's negligence is borne by the lessee.

(118) When is the Ijarah contract deemed to have terminated?

The Ijarah contract is deemed to have terminated either by the contractual terms, one of the party's rescission, or the termination of the possible usufruct of the leased asset through theft, destruction, or the like.

(119) Is it lawful for the bank to sell leases considering these contracts represent financial rights?

It is not lawful for the bank to sell leases because it does not own the right to the usufruct of the leased goods which is the financial right possessed by the lessee during the period of the lease.

(120) What recourse is available to the lessor if the lessee delays lease payments?

The lessor has the right to charge late payment fees. This charge may consist of an administrative charge and a late-payment penalty where administrative charges are the right of the lessor while the late-payment penalty is paid to a designated charity.

(121) May I create an Ijarah agreement of a consumable item?

The leased asset should not be a consumable item, like food, whose quantity reduces with consumption, but rather a durable, like machinery or property, whose market value might depreciate, but quantifiably remains the same.

(122) What are the ways by which the leased asset may be transferred to the lessee?

If a transfer of ownership is to take place at the end of an Ijarah, a document separate and independent of the Ijarah contract must be prepared.

The transfer of ownership may take place in one of the following three ways:

- 1) The lessee may undertake to buy the asset at the end of the period of lease for a certain amount that is mutually decided between both parties at the beginning of the contract. This amount may be the actual cost of the asset or any other nominal value.
- 2) The lessor may undertake to gift the asset to the lessee at the end of the Ijarah period.
- 3) The lessee may even purchase the asset during the period of the lease by making a complete payment of all the rentals owed by him or alternatively, the lessor may allow the lessee to purchase the asset at its market value.

(123) What is a time-share leasing contract and is it permissible?

A time-share lease contract is a permissible leasing structure where the lessor leases the same asset to multiple lessees for different time-periods, with none of the time periods overlapping with one another.

(124) What is said of trading rental claims without transferring the proportionate ownership of the leased asset?

Ownership, not the right to claim rent, represents the tradable portion of the certificate. The Shariah permits the trading of assets, not of money, for profit, and a rental claim is a receivable that represents money. So trading rental claims without first transferring ownership is forbidden. But it is acceptable for many buyers seeking ownership and many sellers seeking profit to trade Ijarah certificates like common securities in a capital market.

(125) In relation to the leased asset, what is the lessor responsible for?

With regards to the leased asset, the lessor is responsible for:

- The risk associated with the leased asset, during the entire period of lease, belongs to the lessor. It is the lessor's responsibility to replace the leased asset in case of any damage to it barring negligence on the part of the lessee.
- The major maintenance and insurance of the asset during the period of lease and the resulting expense is the lessor's responsibility entirely.
- At the time of the establishment of lease rentals, the lessor may cover his insurance cost, however, once the rentals have been fixed, any increase in the insurance premiums cannot be adjusted in the rental amounts to be paid by the lessee. The lessor will have to bear the additional insurance expense himself or adjust it to the rentals of the next ijarah term.
- The lessor may assume responsibility for insurance by making the client his agent to deal with the insurance company.

(126) Is there any difference between an invalid Ijarah contract and a void Ijarah contract?

Islamic jurists have not differentiated between the two. A contract is prohibited if it does not fulfill the requirements of the Shariah, and prohibition necessitates non-existence of the contract. In an invalid or void contract, if the lessee benefits from the usufruct, or if time elapses during which the leased asset could have been utilized, the lessee pays equivalent rent, assessed as being the rent of similar usufruct.

(127) Whose responsibility is it to pay for any legally required insurance and who is entitled to receiving any payout from the insurer?

The lessor is obligated to pay any legally required insurance on the leased property; any payout by the insurer should go to the lessor and the net amount (i.e. total payout less total premiums paid) should be given away in charity to avoid riba.

(128) Is the lessee obliged to pay lease rentals if the usufruct does not meet expectations?

The lessee is obliged to pay lease rentals as long as the usufruct of the leased asset is at his disposal. However, he reserves the right to rescind the contract in the event that the usufruct does not comply with the terms of the Ijarah contract, after which no monthly rentals are due.

(129) What is the liability of the lessee regarding damage to the leased asset?

The leased asset is in the possession of the lessee as a trust and damage resulting from the lessee's negligence is borne by the lessee.

(130) Will it be lawful to offer previously leased properties in an investment fund?

Leased properties are not suitable for offering in an investment fund since the usufruct of the real estate becomes the possession of the lessee with the signing of the lease contract and there is no way thereafter for the owner of the property to sell his share in the usufruct or for a partner to have a right to the earnings on his share of it.

This is because what the owner retains after the lease is the counter value of the usufruct or the debt that has become the liability of the lessee and it is not permissible to sell debt.

(131) Is the commencement of the lease, and the resultant rental obligation, according to usage or according to the terms of the contract?

The lease, and the resultant rental obligation on the lessee, commences according to the contract, not according to usage, provided the leased asset is usable at the time the lease period commences. If the rental period has begun, but the tenant has not begun using the property (provided the asset is available to use), the tenant is still obligated to pay rent.

(132) The bank leases land for the purpose of building a branch office. The improvements on the land and the construction of the branch office require two years before it can be opened for business. When is the bank required to begin lease payments on the land; from the time of possession or from the time the branch office is opened?

Payments are required from the lessee from the time of taking possession of the item leased from the lessor. In the case mentioned, payments will be due as soon as possession of the land is assumed by the lessee.

(133) What is the Shariah ruling in regard to leasing real estate to supermarkets, restaurants, hotels or tourist shops whose products may include Islamically prohibited items?

If the purpose of the lease is purely prohibited, like a bar or a nightclub, then the lease contract is prohibited because the subject of the contract itself is prohibited.

It is lawful, however, to lease property to a business concern whose primary business is in lawful goods and services even if it is to a lesser degree supplemented by income from unlawful goods and services.

(134) Is it permissible for the lessee to sublet the leased asset?

It is permissible for the lessee to sub-lease the leased asset if the Ijarah contract does not prohibit it. The lessee is free to sublet at any rate, whether the same, higher, or lower.

(135) When does the lease period begin?

The lease, which may even be fixed for a future date, commences with the delivery (and usability) of the leased property or service.

(136) Is it permissible for a lessee to assign the usufruct of the leased asset to another lessee of the same asset in a time-share lease contract?

The lessee may transfer the usufruct of the leased asset to another lessee of the same asset with the permission of the lessor. In such a case, the original contract between the lessor and the lessee to whom the usufruct is transferred is considered rescinded and a new contract is entered into.

(137) May Ijarah rental payments be made in kind?

Similar to a regular sale transaction, Ijarah rental payments may be made in cash or in kind. Any valid consideration in a contract of sale may be agreed upon as rent in a contract of Ijarah.

(138) Is it lawful for Islamic companies to lease equipment like airplanes and heavy machinery to other institutions for a certain period of time, i.e. ten years and then after two years, sell the equipment along with the leases to another company, all the while continuing to manage the equipment for the life of the leases, collecting the lease payments and delivering them to the new owners?

It is permissible for Islamic companies to purchase equipment that carries already concluded lease contracts for it.

The lease will continue for as long as was specified in the Ijarah agreement, which is a binding contract.

The first lessor is permitted to manage the equipment by collecting the payments from the lessee and guaranteeing that the lessee will honour his financial obligations.

AGENCY QUESTIONS

(139) Is it permissible for the bank to alter its agency rates represented in its schedule or to add new rates for new services?

It is lawful for the bank to alter agency rates and make them effective from the date they are changed on the condition that the client is informed in advance. The client has the right to dispute any such changes within a fixed number of days based on which the bank exercises the right to either accept the client's objection or to invalidate its contract with him.

(140) Can the bank in its capacity as an agent of another firm take a nominal percentage in return for its collecting sums of money for that firm?

It is lawful for the bank to serve as an agent for another firm in which case it is permissible for it to accept a fee in return for its agency.

(141) Is it lawful to appoint an intermediary who will be the agent for the buyer and the seller at the same time?

It is lawful to appoint an intermediary who will be the agent for the buyer and the seller at the same time. It is important that the agent restrict his dealings to the terms of the agency agreement.

(142) Is it lawful for an agent to be a surety as well?

If the contract of agency is inclusive of both delivering goods and collecting the money paid for them, it will be lawful for the agent to be a surety as well. If the contract is limited to transacting, with no agency to collect payments on behalf of the principal, then it will be unlawful for the agent to act as both agent and surety.

(143) What does an agent's failure in conforming to his grantors specific instructions result in?

Contraventions to the specific instructions of a commission render transactions related to the commission invalid, unless the instructions are not specific and the result is a favorable one (e.g.

when something is sold for a higher price or when something is bought for a lower price, unless specified otherwise), in which case the sale is valid.

(144) Is it lawful to take a service charge for processing documents as an agent for a payer or payee bank?

It is lawful for the bank to accept a fee for the services it performs as an agent on behalf of the payer or payee bank.

(145) Can one grantor assign two or more agents to the same or separate commissions?

It is permissible for one grantor to assign two or more agents to the same or separate commissions. When two or more agents are assigned to the same commission, they must transact it together unless the grantor permits otherwise

(146) Is it lawful for the principal to stipulate that the agent may not sell what he is authorized to sell except at spot for cash and if he sells for credit, he will become the buyer's guarantor?

It is lawful for the principal to stipulate that the agent not sell except for cash and if he does sell for credit, that he becomes the buyer's guarantor for the sale price in the event that the buyer defaults on his payment.

(147) Is it permissible to appoint one person as an agent for two different operations, i.e. to make a purchase on behalf of the bank or to sell to a client on credit?

There is no legal impediment to granting agency to one person for purchasing and then selling.

(148) Can the bank appoint an agent for the purpose of both buying and taking delivery?

Yes, the bank can appoint an agent for the purpose of both purchasing and taking delivery.

(149) If a company appoints an agent, is it lawful to stipulate that the agent only ship the goods in one of the company's own freighters?

It is permissible for a principal to stipulate that an agent only use the principal's means of transport.

(150) Is it permissible to appoint one person as an agent for two different operations, i.e. to make a purchase on behalf of the bank or to sell to a client on credit?

There is no legal impediment to granting agency to one person for purchasing and then selling.

(151) Can the bank appoint an agent for the purpose of both buying and taking delivery?

Yes, the bank can appoint an agent for the purpose of both purchasing and taking delivery.

(152) Is it lawful for the intermediary agent to buy and sell without informing either the buyer or the seller about the party from which the merchandise is bought and the party to which it was sold?

It is lawful for the agent to not disclose to the buyer or the seller the identity of the party from which the merchandise is bought and the party to which it is sold.

It is essential however, that the agent does not transgress the limits of his agency either. If the agent sells at a price lower than the one specified by the principal, the transaction will be suspended and remain conditional upon the principal's approval.

If the agent buys at a higher price than the one specified by the principal, the transaction will go through but will be binding on the agent and not the principal.

(153) Is the agent responsible for merchandise for as long as it remains in his possession before selling it?

An agent is not considered a guarantor except in cases of shortcoming or transgression. Merchandise in his possession is considered a trust.

(154) Is it a condition that a price be agreed upon by at least one of the two principals and that these instructions be given in advance?

The setting of the price for an agent in a sale or a purchase is not a condition to the validity of the agency however, if the principal does specify a price and the agent exceeds it, the rulings pertaining to the relevant agency agreement will apply, i.e. the transaction will go through but be binding on the agent and not the principal.

If the agent sells the merchandise at a price lower than the one specified by the principal, the transaction will remain suspended and conditional upon the approval of the principal.

(155) Is it lawful to take a service charge for processing documents as an agent for a payer or payee bank?

It is lawful for the bank to accept a fee for the services it performs as an agent on behalf of the payer or payee bank.

(156) Is it lawful for the bank to grant agency to someone to sell goods on its behalf to different parties, if the lowest price for the sales and the time within which all payments are to be collected is specified?

An agency accepts conditions related to time, place, deeds, amounts and deadlines in addition to all other conditions agreed to between the principal and the agent. The agent must make every effort to realize the rights of the principal, however, he is not be responsible for any loss unless he is guilty of negligence or deliberately acting contrary to the conditions stipulated by the principal.

BEQUEST QUESTIONS

(157) Is it permissible to bequest the entire estate to an individual or organization if there are no estate heirs?

If there are no estate heirs, it is permissible to bequest the entire estate to an individual or organization.

(158) Under what conditions may a beneficiary validly cancel the ownership of the bequested item?

The beneficiary's ownership of the bequested item is only cancelable by the beneficiary before taking constructive possession of the item; thereafter, cancellation by the beneficiary is invalid and only a separate disposition removes the item from the beneficiary's property.

(159) Can an estate heir also be the beneficiary of a bequest?

It is impermissible for the beneficiary of a bequest to be an estate heir, unless the sane, adult estate heirs unanimously agree to the bequest; meaning, an heir to the two-thirds (of the testator's property normally reserved for estate division) may receive a bequest from the one-third (of the testator's property normally reserved for estate division) if the sane, adult estate heirs unanimously agree.

(160) When does the ownership of the bequested item transfer to the beneficiary?

In cases where the beneficiary is specified, once the beneficiary accepts the bequest, ownership of the bequested item transfers to the beneficiary upon the testator's death, even if actual possession takes place much later.

(161) What is a "bequest"?

A bequest is a testament given by one individual (the testator) to another individual (the executor) in order to perform a function or execute an activity for the benefit of another individual (the beneficiary) or group of individuals. Bequests include:

- 1) Contractual dealings: buying, selling, trading, leasing, transferring, canceling, deferring, renting, borrowing, lending, repaying a debt, guaranteeing, collateralizing, and the like;
- 2) Legal dealings: litigating, conducting a marriage or divorce for which the testator is guardian, witnessing, establishing proof, punishing, and the like;
- 3) Religious dealings: performing hajj or Umra, distributing zakat and charity, paying burial expenses, and the like;
- 4) Personal dealings: maintaining the testator's property and dependents, gifting, running errands, and the like;

5) Future benefit: bequesting the right (without ownership) to a possible future benefit, including the right to its profit, whether the source of the benefit exists now or may exist in future;

6) Usufruct: bequesting the right to use (but not own) something, including the right to profit from its use.

(162) From where should the post-death outstanding obligations (e.g. unpaid debt) be paid for the testator: (i) from his bequested one-third; or (ii) from his remaining two-thirds?

If the testator specifies a bequest to pay for something obligatory (e.g. unpaid debt), the money should come out of the bequested one-third; if the testator does not specify the bequest and the testator's obligation remains outstanding at the time of his death, the money should come out of the remaining two-thirds, and if obligations remain, the bequested one-third.

(163) When and how is the bequest cancelable?

The bequest is cancelable at any time by the testator before the beneficiary takes constructive possession of the item; cancellation of the bequest is effected by:

- 1) The testator stating so, whether spoken or written;
- 2) The testator using (assuming this diminishes the usefulness of the item), losing, consuming, bequesting (where the new bequest supersedes the previous one), using as collateral, gifting, selling, or any transactions that transfer the testator's ownership of the item and thereby nullifies the bequest;
- 3) The beneficiary's death, if this occurs before the beneficiary's acceptance or constructive possession of the item, though if the beneficiary dies before making an acceptance, the estate heirs are entitled to accepting the bequest.

(164) When is the executorship cancelable?

The executorship is cancelable at any time by either testator or executor, with the exception that if after the testator's death the executor is almost certain that the bequest will be misappropriated, the executor is forbidden from canceling the bequest unless a qualified executor is found to replace him.

(165) How much of the total estate may the testator bequest?

The testator may bequest up to one-third of his property, where the market value of this amount is measured at the time of the testator's death.

(166) Is a testator permitted to forgive debts when nearing death?

It is impermissible for a testator on his deathbed (or a female testator in labor who eventually dies while giving birth) to forgive any portion of the debts owed unless all the sane, adult estate heirs unanimously agree to doing so, in which case debtors who are estate heirs may be forgiven the entire debt while debtors who are not estate heirs may only be forgiven up to one-third of the estate's value; if the testator recovers it is permissible to forgive debts.

(167) From where should the post-death outstanding obligations (e.g. unpaid debt) be paid for the testator: (i) from his bequested one-third; or (ii) from his remaining two-thirds?

If the testator specifies a bequest to pay for something obligatory (e.g. unpaid debt), the money should come out of the bequested one-third; if the testator does not specify the bequest and the testator's obligation remains outstanding at the time of his death, the money should come out of the remaining two-thirds, and if obligations remain, the bequested one-third.

(168) Under what conditions may a beneficiary validly cancel the ownership of the bequested item?

The beneficiary's ownership of the bequested item is only cancelable by the beneficiary before taking constructive possession of the item; thereafter, cancellation by the beneficiary is invalid and only a separate disposition removes the item from the beneficiary's property.

(169) When and how is the bequest cancelable?

The bequest is cancelable at any time by the testator before the beneficiary takes constructive possession of the item; cancellation of the bequest is effected by:

- 1) the testator stating so, whether spoken or written;
- 2) the testator using (assuming this diminishes the usefulness of the item), losing, consuming, bequesting (where the new bequest supersedes the previous one), using as collateral, gifting,

selling, or any transactions that transfer the testator's ownership of the item and thereby nullifies the bequest;

3) the beneficiary's death, if this occurs before the beneficiary's acceptance or constructive possession of the item, though if the beneficiary dies before making an acceptance, the estate heirs are entitled to accepting the bequest.

(170) When is the executorship cancelable?

The executorship is cancelable at any time by either testator or executor, with the exception that if after the testator's death the executor is almost certain that the bequest will be misappropriated, the executor is forbidden from canceling the bequest unless a qualified executor is found to replace him.

(171) How much of the total estate may the testator bequest?

The testator may bequest up to one-third of his property, where the market value of this amount is measured at the time of the testator's death.

(172) Is it permissible to bequest the property whose quantitative and qualitative attributes are not known?

It is permissible to bequest property when its quantitative and qualitative attributes are not known.

(173) Is it permissible to bequest the entire estate to an individual or organization if there are no estate heirs?

If there are no estate heirs, it is permissible to bequest the entire estate to an individual or organization.

CHARITY QUESTIONS

(174) May I give charity with money that would have otherwise lifted a financial obligation?

It is forbidden to give away money that would have otherwise fulfilled a financial obligation, such as a debt owed to a creditor or maintenance obligations owed to a dependent.

(175) In what particular order of superiority should charity be distributed among people?

In descending order of superiority, it is recommended to give to one's disaffected relatives, one's friendly relatives, and the pious; this is in addition to what is spent of one's wealth in supporting one's family and dependents, which is already regarded by God as a form of charity; generally, it is permissible to give charity to non-Muslims who are not enemies of Islam.

(176) If a person would like to contribute to a charitable cause but he has an outstanding debt obligation, what should he do?

If one is unable to donate money to a charitable cause because of an outstanding debt, one should instead donate one's time and effort.

(177) May I give all my excess wealth in charity?

It is recommended to give away the excess of one's wealth, meaning wealth additional to what is necessary to earn one's livelihood, support one's dependents, and to reasonably support oneself, assuming that one is able to bear the hardship this austerity imposes, though if one's dependents or oneself are unable to withstand it then it is offensive.

It is also recommended to give the highest quality charity, whether monetarily (i.e. money from reliable sources rather than doubtful ones, which is offensive) or in-kind (i.e. goods from the superior of one's food, clothing, livestock, and so on, rather than from the inferior, which is offensive).

(178) When the one distributing charity is unable to distribute the entire amount, what happens to the remaining charity?

When an individual or institution assigned with the task of distributing charity is unable to distribute the entire amount, the remaining charity should be returned to the donor or, with the permission of the donor, be given according to the payer's instructions; if contacting the original donor is not possible, the money should be given as charity to a similar cause.

(179) Would it be permissible to accept charity from an individual who by giving charity is trying to eliminate unlawful earnings from his wealth?

It is permissible to accept charity from an individual who is eliminating unlawful earnings from his wealth; the sin related to the earnings devolves to the one engaged in the original unlawful act, and accordingly the unlawfulness is attached to the original transaction, not to the money earned thereby.

COLLATERAL QUESTIONS

(180) Is it permissible to grant credit facilities to clients in return for goods held as collateral at the bank's own warehouses or in those of the client but under the bank's supervision?

It is permissible for the bank to accept pledges from its clients with regard to goods they may desire to purchase from it on a deferred basis, with the condition that they use the deferred price as collateral for a period of time. The goods may then be released in parts according to the percentages paid for the period of deferment.

(181) If a merchant purchases machinery from a conventional bank and uses it as collateral for the Islamic bank until he finishes paying for it but is unable after a few payments to continue; will it be lawful for the Islamic bank to purchase the machinery from the conventional bank and then resell it to the merchant?

It is lawful for the Islamic bank to purchase the machinery from the conventional bank and then resell it to the merchant. Ideally, however, it is better for the Islamic bank to refrain from dealing with interest-based banks altogether.

(182) Is it lawful to use money deposited in bank accounts as collateral?

The use of deposits as collateral is lawful regardless of whether these are demand deposits or investment accounts. The amounts in such deposits may only be used as collateral if steps have been taken to prevent the depositor from accessing the amount for the entire period of collateralization. The profits accrued will be the right of the account holder.

(183) Is it lawful for Islamic banks to offer bonus shares as collateral in favour of conventional banks?

It is not lawful for Islamic banks to offer bonus shares as collateral in favour of conventional banks since it would be equivalent to facilitating an increase and guaranteeing a debt with interest.

(184) Is it lawful for the bank to sign an Istisna contract with a land-owning client for the purpose of developing the land, building on it and then selling the building to the client based on a Murabaha while holding the land as collateral until the client finishes making his payments?

It is permissible for the bank to enter into a contract of Istisna with its client for the purpose of developing land. Once the Istisna is concluded and the cost of the building becomes known, the cost will be the bank's right over the client or buyer.

In case there is an agreement to defer payment, the bank will have the right to request the client to guarantee his payment of debt by offering the land as collateral.

(185) Is it lawful for the credit department to stipulate in a contract that a company's accounts receivable be held as a guarantee for debt deferred in return for credit?

The credit department may reserve the rights to the accounts receivable of a company as a guarantee of its debt but only if this is made a condition at the time of contracting with the client.

(186) Is it lawful for the bank to take collateral from its client before it purchases goods from the importer and sells them to him?

The creditor has no right to take collateral from his client before the debt is established. It is only lawful to take collateral as confirmation of the execution of a contract of sale.

(187) Is it lawful to make a purchase on the basis of deferred payments for a client who is an investment account holder at the bank if the account is used as collateral for the purchase price?

Such a purchase is lawful because the investment deposit represents a part of the goods purchased for sale and investment and it is lawful to hold material goods as collateral.

(188) Is it lawful for the bank to place a hold on a current account for an amount equal to a debt that is either owed by the account holder himself or guaranteed through an agency for another?

It is lawful to put a hold on a current account for debt owed by the client since in this way the client is considered to have honored it by means of a deduction. It is also lawful to put a hold on the current account of a person serving as an agent on behalf of another for the purpose of honoring debt.

(189) Is it lawful for the Islamic bank to accept a note from a conventional bank to the effect that the money possessed in its client's account will be held in the Islamic bank's favour as collateral?

It is lawful for the Islamic bank to hold a deposit in a conventional bank as collateral.

(190) Is it lawful to use money deposited in bank accounts as collateral?

The use of deposits as collateral is lawful regardless of whether these are demand deposits or investment accounts. The amounts in such deposits may only be used as collateral if steps have been taken to prevent the depositor from accessing the amount for the entire period of collateralization. The profits accrued will be the right of the account holder.

CONTRACTS QUESTIONS

(191) Is it valid to cancel a contract due to the low or defective quality of the product?

Products found to be of low or defective quality (such that their quality is below what is purported to be the case or what is customarily considered acceptable, and its usefulness is negatively affected thereby) are returnable (immediately upon discovery of the unsatisfactory quality) within a specified amount of time after delivery, assuming the low or defective quality existed at the time of the transaction but was not disclosed.

“Discovery of unsatisfactory quality” means that the item is seen (e.g. land), and if necessary, used (e.g. car) or consumed (e.g. food), in a manner customary to it before determining its quality. If the defect is not immediately discernible without use (e.g. operation of a new vehicle over long distances in hot weather), the seller is still obligated to compensate the buyer for the defect.

Qualitative or quantitative misrepresentation of any aspect of a good or service is impermissible and constitutes fraud, grounds for the aggrieved party to rescind the agreement at any time. The buyer, nevertheless, still has the choice of whether or not to accept the defective item. If the buyer decides to keep the item as it is, the buyer is not thereby entitled to a compensatory discount, though it is still permissible for the seller to offer a discount.

(192) When does a contract become executable?

Unless otherwise noted because of the nature of the transaction itself, such as an ijarah property whose delivery is fixed for a future date, contracts are effective immediately.

(193) What conditions are acceptable in a contract?

Besides the permissible pre-agreed conditions that exist in a typical contract, the following conditions are also permissible:

- Condition of Payment: Where a good or service will be delivered according to payment;
- Condition of Receipt: Where a payment will be made according to delivery of some good or service;
- Condition of Collateral: Where a specified good secures the underlying price of a contract;

- Condition of Guarantor: Where a specified individual becomes legally obligated to ensure payment;
- Condition of Caveat Emptor: Where the seller declares himself free of responsibility for any defects, assuming the seller could not have been aware of any defects at the time of the sale;
- Condition of Payment Deferral: Where the date of deferred payment is clearly specified and agreed upon in the contract;
- Condition of Industry Practice: Where the contract includes a permissible condition that is accepted as the industry standard in the locality in which the transaction is conducted.

(194) Is it permissible to cancel a contract by mutual agreement of parties?

Under all circumstances, transactions may be cancelled by mutual agreement at the original rates.

(195) Is a buyer entitled to cancel a contract upon inspection of the item?

If a buyer purchases an item without having first seen it, he is entitled to return it upon physical inspection without delay, whether provided for in the contract or not, even if the item is not of low or defective quality; particularly relevant in cases where delivery occurs considerably later than the finalization of the contract (e.g. mail-ordered purchases);

If a seller sells an item without having first seen it, he is not entitled to demand it back, though the buyer is still entitled to return it upon inspection;

If physical inspection proves satisfactory at first (having inspected a part of the item to ascertain the quality of the whole, when it is customary to do so, as is commonly done with larger quantities of fungible goods), but because the item's quality varies markedly within itself (e.g. in a grain silo the visible grain is of satisfactory quality while the rest is not) the buyer discovers only later that the uninspected portion of the item is of low or defective quality, it is permissible to return the unsatisfactory portion of the item (if practicable, otherwise the whole item) once inspected.

(196) Is it permissible to cancel a contract if there is a substantial difference between the transaction price and market price?

If the difference between the market price and the transaction price is substantial enough at the time of payment, the transaction may be cancelled by the buyer. Though jurists do not seem

to specify the degree of difference between the market and transaction prices constituting “substantial,” a percentage may be incorporated into the contract itself.

(197) Is it permissible for a party to cancel a contract unilaterally?

Unilateral cancellations are only permissible if both parties mutually agree beforehand that either party may unilaterally cancel; it is recommended to agree to a cancellation that the other party proposes.

(198) May a contract of employment be cancelled at any time by either party?

Where one party (employer) hires another party (employee) to perform a service, either party is entitled to cancel the contract at any time, though if the employer cancels the contract after the employee begins work, the employer is obligated to pay for work done at the agreed upon rate; but if the employee cancels, whether work had begun or not, the employee is entitled to nothing.

(199) Is it valid for both parties to agree on the unilateral cancellation of a contract within a specified time period?

Both parties may agree in the contract that either party may cancel the transaction unilaterally, without having to supply a reason, within a specified number of days.

(200) Is it permissible to join two separate contracts into one?

It is permissible to join two separate contracts (even if they are related) into one (e.g. a home sale contract combined with a vehicle lease agreement), provided neither one conditions the other.

(201) Is it valid to cancel a contract due to the low or defective quality of the product?

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CURRENCY AND PRECIOUS METALS QUESTIONS

(212) Is it permissible for banks to issue cheques to their clients drawn against correspondent banks abroad and arrange for transfers by wire and by mail to all parts of the world in the same way that it accepts such transfers in the interest of those with whom it deals locally?

Also is it permissible for the bank to accept brokerage fees as well as charge its client for its actual expenses?

It is permissible for the bank to continue its dealings as mentioned in regard to the issuing of cheques and arranging for transfers to and from abroad.

(213) What are the different types of mediums of exchange and what are the rules for their trade?

There are two types of mediums of exchange: natural mediums of exchange (ie. gold and silver) and legal tender (ie. paper currency).

In the exchange between two natural mediums (ie. gold for gold, silver for silver, or gold for silver), it is necessary that they be equal in value and delivered at spot. In an exchange involving legal tender or currency, both currencies must be of equal value and their payment may be either deferred or at spot.

(214) What is the Shariah perspective on the promise to purchase a designated currency, of a designated amount, for a certain price within a given period of time?

It is not permissible to make a promise to purchase currency. The only sale of currency allowed is a straightforward sale that is accompanied by a direct receipt in money barter or the exchange of price for price at spot.

(215) What do the terms “actual” and “constructive” delivery of currency mean?

Actual delivery refers to a hand-to-hand exchange of currency between contracting parties. Constructive delivery refers to anything that is given to a party in the contract empowering it to use it completely to its benefit.

For instance, constructive delivery may be made by means of a cheque, by purchasing a currency and financing it through an existing account or by means of the transfer of credit using a debit or credit card. According to the rules of currency exchange, both parties must receive possession of payment at “the place of the contract.”

(216) What is the Shariah ruling regarding the exchange of gold for paper currency?

It is permissible to trade gold for paper currency in the international market as long as the transaction takes place in accordance with the rules governing the exchange of currencies.

(217) What is the ruling with regard to a promise to buy or sell either gold or silver at some time in the future?

A promise to buy or sell gold or silver in the future opens the door to the sale of debt for debt which is prohibited. A contract for the sale of gold and silver may only be enacted on the basis of a direct mutual receipt of the gold on one side and the price for it on the other, at the same place and at the same time.

(218) What is the Shariah ruling in regard to the purchase of precious stones mounted in gold jewellery?

It is lawful to purchase precious stones set in gold on the condition that there be compliance for the amount of gold present in the jewellery with the rule for selling gold. This rule is that the price of the gold be paid immediately to ensure actual possession. With regard to the jewels, however, their sale may be made on the basis of a deferred payment.

(219) The operations of the bank include the sale of gold after its acquisition from international banks which require that the gold remains guaranteed in the hands of the Islamic bank for the entire period, i.e. from the Islamic bank's receipt of the gold to the time that a purchase is completed. What is the Shariah ruling regarding such a guarantee and the trade of gold in this manner?

Such a deal is permissible because it includes the loan of gold and trading in it while it is the property of the seller-borrower and then a contract of exchange for the purchase of gold for a price agreed to by both parties on the condition that the price is paid immediately and without deferment.

(220) Is it lawful for the issuer of a note to buy it back with payment in a currency other than the currency in which the note was originally issued while disregarding its maturity date at the same time?

The issuer's buying back the note and disregarding the maturity date is the same as his agreeing to exchange the currency of the note for another currency in which it is permissible for one of the counter values to be in excess of the other.

For a lawful mutual exchange there must not be a maturity date, the currency of the original note will be considered to have been paid in an account termed as an exchange on account where the possession of the counter value brought about by the debt, is dropped. It must be ensured however that the bank does not use this allowance as a device to earn profit in return for dropping the maturity date.

(221) Is it lawful for banks to arrange deals involving the forward trading of currencies for its clients?

It is not lawful for banks to be involved directly or indirectly in arranging deals involving the forward trading of currencies.

(222) What do the terms “actual” and “constructive” delivery of currency mean?

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(223) In the event that the client imports goods on credit terms that require the payment to be made after 180 days from the date the goods are shipped, is it permissible for the importer to purchase the currency required for payment to the foreign exporter from the bank while the bank retains this amount until the date the payment falls due? Is it lawful for the bank to use the money and offer its client a price for that currency which is better than the going rate?

In a transaction of currency it is unlawful to defer the receipt of the currency exchanged regardless of whether there is a condition to that effect. It will however be lawful after a spot exchange to deposit the currency with the bank until the time of payment to the exporter.

(224) Is it lawful to sell precious metals and stones other than gold or silver on deferred payment?

Yes, it is permissible to sell precious metals and stones other than gold or silver on deferred payment.

(225) What is the Shariah perspective on the promise to purchase a designated currency, of a designated amount, for a certain price within a given period of time?

It is not permissible to make a promise to purchase currency. The only sale of currency allowed is a straightforward sale that is accompanied by a direct receipt in money barter or the exchange of price for price at spot.

(226) Is it lawful to purchase foreign currencies from mercantile banks by deducting the price of the currencies from the credit accounts held with them?

It is lawful to purchase currencies in such a manner from mercantile banks since it is akin to paying something they owe as a debt, either in full or in part by means of the mutual cancellation of loans.

(227) What is the Shariah ruling in regard to the bank providing funds to trade in currencies?

The Shariah permits the borrowing of amounts from the bank at no interest for the purpose of trading in currencies if the borrower is free to transact as he sees fit. However, if the deal is conducted as a currency exchange, without either party taking delivery, then it will not be lawful because it amounts to an exchange with a delay. The same will be true if the borrower is loaned an amount without him being able to take possession of it.

(228) Is the legal maxim that “all loans which bring on profit are riba” applicable to the exchange of deposits in the event that if the two parties fail to agree to the loan exchange, it will not take place at the initiative of only one party?

The legal maxim mentioned does not apply to an exchange of deposits as no profit is realized from a loan per se; rather the same amount borrowed is returned without any increase in either cash or kind. In trade, benefits usually accrue in transactions where the parties agree to transact with one another.

(229) Is it lawful to purchase platinum on the basis of deferred payments?

It is permissible to deal in platinum on the basis of deferred payments as it is not the same as gold or silver and the conditions applying to these two metals do not apply to it.

(230) Is it lawful to exchange notes having payments deferred for several years for foreign currency other than the one in which the original note was issued?

It is not lawful to exchange notes with deferred payments for the currency in which they were originally issued or for any other currency, as an exchange in the same currency will be like the sale of debt for debt that is deferred, when it is essential that the mutual exchange of equal counter values take place in the sale of currency for a similar currency.

(231) Can there be an exchange of similar currency between two contracting parties?

Yes, in order to avoid the risk of loss due to fluctuating exchange rates, it is permissible for two contracting parties to deal in the same currency. If at the time of the contract's maturity the party that needs to make the payment is unable to do so in the established currency, the amount can be converted into the currency of the country at the going rate and paid as such.

This ruling may be applied where the client is willing to leave himself open to the risk of fluctuating currency rates. The delivery of both amounts must be at spot.

(232) What is the ruling on a binding mutual promise to purchase different currencies at the rates current on the day of the promise when the delivery of the counter values will be delayed to allow for a hand to hand exchange in the future?

In the event that the promise is considered binding on both parties it will fall under the general prohibition against the sale of debt for debt and will therefore be unlawful. If the promise is not binding on both parties then such an exchange involving different currencies at the rates current on the day of the promise for a hand to hand exchange in the future is permissible.

(233) Is it permissible to purchase currencies for cash and at prices below the current market rates if the purchase is made from one of the banks with which a client has extensive dealings?

In the event that a definite price for the currencies has not been set by a responsible authority, legal consideration may be given to what the two parties agree upon. The cash however must actually exchange hands or otherwise immediate ledger entries by both parties in the exchange of currencies may be considered lawful as well.

(234) Is it lawful to purchase platinum on the basis of deferred payments?

It is permissible to deal in platinum on the basis of deferred payments as it is not the same as gold or silver and the conditions applying to these two metals do not apply to it.

(235) Who bears the cost of exchange when a client seeks to exchange the value of a cheque in cash?

The one to whom the cheque is written bears the cost of the exchange since he is the one carrying out the exchange.

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In a transaction of currency it is unlawful to defer the receipt of the currency exchanged regardless of whether there is a condition to that effect. It will however be lawful after a spot exchange to deposit the currency with the bank until the time of payment to the exporter.

(238) What is the ruling in regard to the purchase of currency when the receipt of possession and receipt of the counter value take place on two separate days?

Granting a cheque payable on demand and without post dating it, or even ordering a payment without deferment over the telephone may be considered fulfilling the condition of possession.

(239) When a client approaches the bank for a Murabaha deal, the bank purchases the goods from a dealer abroad and after taking possession, sells them to the client. In the event that the client offers to sell the bank foreign currency at an appropriate rate to make payment to the supplier of goods, will it be permissible for the bank to engage in such a transaction?

As long as the contract for the sale of goods remains separate from and independent of the contract for the purchase of currency from the client, such a transaction is permissible.

(240) May I defer payment when buying cash with gold or silver?

It is permissible to defer payment when buying cash with gold or silver.

(241) What is the Shariah perspective on the promise to purchase a designated currency, of a designated amount, for a certain price within a given period of time?

It is not permissible to make a promise to purchase currency. The only sale of currency allowed is a straightforward sale that is accompanied by a direct receipt in money barter or the exchange of price for price at spot.

(242) May I trade in gold/silver alloys or gold/silver jewellery mixed with other material by paying an amount greater than the value of the gold/silver in it?

When buying anything containing a combination of gold and non-gold material, or silver and non-silver material, or silver and gold, it is forbidden to pay in gold (for items containing gold) or silver (for items containing silver) an amount that exceeds the gold or silver contained in the item. It is permissible to defer payment for the amount equivalent to the non-gold or non-silver material contained in the item, while it remains obligatory to pay on spot the amount equivalent to at least the gold or silver material contained in the item. Generally, when there is doubt, it is preferable to pay in cash or a combination of the commodity and cash.

(243) May I exchange gold and silver for each other if the market value is not consistent with the face value?

When the market value of a gold or silver commodity is different from its face value (e.g. a \$1000 gold coin is selling for \$1100), or when the value addition to a gold or silver item

increases its price in relation to its value in weight (e.g. gold jewellery worth \$1000 in weight sells for \$1100), its purchase in the same commodity (e.g. gold purchased for gold) for an amount other than its face value is forbidden.

In order to make the purchase, it is necessary that one pay in a different currency (e.g. in cash or a similar exchangeable monetary instrument, in silver if buying gold, or in gold if buying silver). It is permissible to pay a part of the amount in the same commodity and the balance in a different currency (e.g. a gold coin whose face value is \$100 and market value is \$110 may be purchased with \$90 of gold and \$20 of cash). As a general rule to avoid riba, gold and silver and their products should be paid for in cash or a combination of the commodity and cash, and always on spot.

(244) May I trade in gold/silver alloys or gold/silver jewellery mixed with other material by paying an amount greater than the value of the gold/silver in it?

When buying anything containing a combination of gold and non-gold material, or silver and non-silver material, or silver and gold, it is forbidden to pay in gold (for items containing gold) or silver (for items containing silver) an amount that exceeds the gold or silver contained in the item. It is permissible to defer payment for the amount equivalent to the non-gold or non-silver material contained in the item, while it remains obligatory to pay on spot the amount equivalent to at least the gold or silver material contained in the item. Generally, when there is doubt, it is preferable to pay in cash or a combination of the commodity and cash.

(245) What do the terms “actual” and “constructive” delivery of currency mean?

Actual delivery refers to a hand-to-hand exchange of currency between contracting parties. Constructive delivery refers to anything that is given to a party in the contract empowering it to use it completely to its benefit.

For instance, constructive delivery may be made by means of a cheque, by purchasing a currency and financing it through an existing account or by means of the transfer of credit using a debit or credit card. According to the rules of currency exchange, both parties must receive possession of payment at “the place of the contract.”

(246) Is it permissible to enter into forward currency contracts?

No, it is not permissible to enter into currency contracts for the future since they involve elements of riba and gharar.

(247) What is the ruling on a binding mutual promise to purchase different currencies at the rates current on the day of the promise when the delivery of the counter values will be delayed to allow for a hand to hand exchange in the future?

In the event that the promise is considered binding on both parties it will fall under the general prohibition against the sale of debt for debt and will therefore be unlawful. If the promise is not binding on both parties then such an exchange involving different currencies at the rates current on the day of the promise for a hand to hand exchange in the future is permissible.

(248) What constitutes gold and silver?

Gold and silver includes pure gold and silver and items containing them, such as jewellery.

(249) Is it lawful to pay without delay the price of gold in ready cash and how can mutual possession be accomplished?

It is lawful to pay for gold with ready cash in any currency at the market price on the day of payment. Possession of the counter values in such an exchange must take place on the spot.

(250) What is the Shariah perspective on the promise to purchase a designated currency, of a designated amount, for a certain price within a given period of time?

It is not permissible to make a promise to purchase currency. The only sale of currency allowed is a straightforward sale that is accompanied by a direct receipt in money barter or the exchange of price for price at spot.

(251) May I exchange gold and silver for each other if the market value is not consistent with the face value?

When the market value of a gold or silver commodity is different from its face value (e.g. a \$1000 gold coin is selling for \$1100), or when the value addition to a gold or silver item increases its price in relation to its value in weight (e.g. gold jewellery worth \$1000 in weight

sells for \$1100), its purchase in the same commodity (e.g. gold purchased for gold) for an amount other than its face value is forbidden.

In order to make the purchase, it is necessary that one pay in a different currency (e.g. in cash or a similar exchangeable monetary instrument, in silver if buying gold, or in gold if buying silver). It is permissible to pay a part of the amount in the same commodity and the balance in a different currency (e.g. a gold coin whose face value is \$100 and market value is \$110 may be purchased with \$90 of gold and \$20 of cash). As a general rule to avoid riba, gold and silver and their products should be paid for in cash or a combination of the commodity and cash, and always on spot.

(252) What is the Shariah ruling in regard to the bank providing funds to trade in currencies?

The Shariah permits the borrowing of amounts from the bank at no interest for the purpose of trading in currencies if the borrower is free to transact as he sees fit. However, if the deal is conducted as a currency exchange, without either party taking delivery, then it will not be lawful because it amounts to an exchange with a delay. The same will be true if the borrower is loaned an amount without him being able to take possession of it.

(253) In the event that the client imports goods on credit terms that require the payment to be made after 180 days from the date the goods are shipped, is it permissible for the importer to purchase the currency required for payment to the foreign exporter from the bank while the bank retains this amount until the date the payment falls due? Is it lawful for the bank to use the money and offer its client a price for that currency which is better than the going rate?

In a transaction of currency it is unlawful to defer the receipt of the currency exchanged regardless of whether there is a condition to that effect. It will however be lawful after a spot exchange to deposit the currency with the bank until the time of payment to the exporter.

(254) May I exchange different currencies?

It is permissible to exchange different currencies at spot according to an agreed upon rate of exchange.

(255) May I exchange gold for gold or silver for silver?

It is obligatory that when gold is exchanged for gold or silver exchanged for silver (e.g. a gold bar for a gold coin) they be of equal weight and that the transaction is conducted on spot (i.e. transactions in which execution, payment, and delivery occur at the same time and the transacting parties are present throughout).

(256) What is the Shariah ruling in regard to a mutual promise for the sale of various currencies at the rate of exchange on the day of the agreement on the condition that delivery of both counter values will be delayed so that the exchange may take place hand to hand in the future? Will it make a difference if the promise is binding or non-binding?

A mutual promise such as this if binding on both parties is subject to the general prohibition against the sale of debt for debt and is therefore unlawful. In the event that the mutual promise is not binding on both parties, it is considered lawful.

(257) In the event that the client imports goods on credit terms that require the payment to be made after 180 days from the date the goods are shipped, is it permissible for the importer to purchase the currency required for payment to the foreign exporter from the bank while the bank retains this amount until the date the payment falls due? Is it lawful for the bank to use the money and offer its client a price for that currency which is better than the going rate?

In a transaction of currency it is unlawful to defer the receipt of the currency exchanged regardless of whether there is a condition to that effect. It will however be lawful after a spot exchange to deposit the currency with the bank until the time of payment to the exporter.

(258) Is it lawful to exchange notes having payments deferred for several years for foreign currency other than the one in which the original note was issued?

It is not lawful to exchange notes with deferred payments for the currency in which they were originally issued or for any other currency, as an exchange in the same currency will be like the sale of debt for debt that is deferred, when it is essential that the mutual exchange of equal counter values take place in the sale of currency for a similar currency.

(259) May I exchange gold with silver, and vice versa?

It is permissible that when gold is exchanged for silver or silver for gold (e.g. a silver coin for a gold coin) they be of different weight (or equal weight), though it is still obligatory that the transaction be conducted on spot.

(260) What should I do if spot purchasing gold or silver is not possible?

If spot purchasing is not possible, it is permissible for the seller to first lend the buyer money as a separate transaction, and then make the exchange, placing no conditions between the loan transaction and the commodity transaction.

(261) What is the ruling on a binding mutual promise to purchase different currencies at the rates current on the day of the promise when the delivery of the counter values will be delayed to allow for a hand to hand exchange in the future?

In the event that the promise is considered binding on both parties it will fall under the general prohibition against the sale of debt for debt and will therefore be unlawful. If the promise is not binding on both parties then such an exchange involving different currencies at the rates current on the day of the promise for a hand to hand exchange in the future is permissible.

(262) What are the different types of mediums of exchange and what are the rules for their trade?

There are two types of mediums of exchange: natural mediums of exchange (ie. gold and silver) and legal tender (ie. paper currency).

In the exchange between two natural mediums (ie. gold for gold, silver for silver, or gold for silver), it is necessary that they be equal in value and delivered at spot. In an exchange involving legal tender or currency, both currencies must be of equal value and their payment may be either deferred or at spot.

(263) Is it permissible for banks to sell foreign currency at two different rates; one rate for transfers and another for cash?

It is permissible for banks to sell currency at a different rate for transfers than for cash as long as there is no international law to prevent it and on the condition that the transfer takes place at spot.

EMPLOYMENT QUESTIONS

(264) To what permissible extent may I claim worker's compensation from my employer?

Provided the employment contract entitles the employee to worker's compensation, it is permissible to take worker's compensation from one's employer for injuries sustained on the job and, if necessary, to contest disputes over financial settlements in court; worker's compensation permissibly includes, but is not limited to, payment for medical expenses, lost wages and emotional distress; if there is no provision in the contract, the employer is recommended, but not obligated, to provide worker's compensation unless injury is caused directly by the employer's negligence (and not merely by the employee having injured himself due to his own negligence).

(265) May one continue doing his job with an employer whose primary business is unlawful, given the job he does is not directly linked to the unlawful?

If one is employed in lawful work (e.g. working as a security guard for an interest-based bank) or work that is not directly unlawful (e.g. working as a secretary for an interest-based bank) with an employer whose primary business is unlawful, it is permissible, though disliked, to continue with the work but superior to find work with an employer whose primary business is lawful.

(266) Are employees and temporary workers held accountable for loss, damage or theft resulting from their negligence?

Employees and temporary workers do not count as individuals who rent out their services, and therefore may not be asked for compensation for loss, damage or theft, even due to their own negligence, unless the loss, damage or theft is intentional, in which case compensation may be demanded.

(267) Who is entitled to initiate the cancellation of an employment contract?

Both employer and employee are entitled to cancel the employment contract at any time given an agreed upon notice period, though if the employer cancels the contract after the employee

begins work, the employer is obligated to pay for work done at the agreed upon rate; but if the employee cancels, whether work had begun or not, the employee is entitled to nothing.

(268) If one is required to perform occasional unlawful acts during the course of an otherwise lawful job, should one continue working with such an employer?

If one is employed in lawful work that occasionally requires one to perform something unlawful, one must leave the employer unless one's obligation to perform the unlawful work is waived.

(269) What is said of doing a job directly linked to the unlawful, or working for an employer whose primary business is unlawful?

It is unlawful to perform work that is directly unlawful (i.e. work that is itself unlawful or even assists in the unlawful) or to work for an employer (even if one does not participate directly in the transactions) whose primary business is unlawful (e.g. interest-based banking).

(270) Is it permissible to record interest-based transactions?

The unlawfulness of any form of employment depends on how direct one's involvement is to the unlawful: direct involvement entails that one participates in the actual execution of an unlawful transaction; using interest-based transactions as an example, the one who buys, sells, trades, witnesses, records, calculates or in any way directly assists in an interest-based transaction during its execution is culpable (e.g. car buyer who contracts an interest-based lease; homeowner who takes a mortgage; futures and options trader; insurance salesman; loan officer); if an accountant, for instance, merely records a transaction that has already taken place, the involvement is not considered direct, and therefore remains permissible, though it is always superior to avoid the doubtful.

(271) Is it permissible to provide investment consultancy services at a company that solicits interest-based loans for its clients from conventional banks and carries out feasibility studies for investments based on these interest-based loans?

There are two considerations with respect to the permissibility of working in such a company; timing and level of involvement.

Timing - If one assists in an impermissible transaction before the point of execution, one may fall into the impermissible. If one merely records an impermissible transaction that has already been executed (ie. postmortem auditing and accounting), one does not fall into an area of clear prohibition, though the scholars state that this is better to avoid.

Level of involvement - If one is involved in initiating, proposing, assisting, or executing an impermissible transaction, one is culpable.

Since the company facilitates in obtaining of interest-based loans for its client and advises on them, providing investment consultancy services for such a company would be equivalent to assisting in prohibited transactions and, therefore, impermissible.

(272) An employee believes that a portion of his wages was taken for work not done altogether. What should he do?

If an employee is certain that wages were taken for work not done altogether, those wages must be returned to the employer, unless the employer forgives the employee; if the wages were taken for work done partially or poorly, those wages may be kept by the employee.

(273) Are non-compete clauses that restrict an employee's ability to work in another company valid?

Non-compete clauses that restrict an employee's ability to work in another company are impermissible and corrupt the entire contract, though the contract itself remains valid and the clause would only have the effect of a non-binding promise.

(274) If one is required to perform occasional unlawful acts during the course of an otherwise lawful job, should one continue working with such an employer?

If one is employed in lawful work that occasionally requires one to perform something unlawful, one must leave the employer unless one's obligation to perform the unlawful work is waived.

ENDOWMENT QUESTIONS

(275) Is it permissible to endow the usufruct of a property, without endowing its ownership?

Usufruct alone is not endowable. While it is permissible to specify the manner in which the endowment is to be used (e.g. “the usufruct of this building goes to the poor and needy”), it is impermissible to endow only the use of a property while maintaining private ownership.

(276) Can endowments be used for personal gain?

Endowments may not be used for personal gain unrelated to the endowment’s purpose or unspecified in the endowment’s guidelines.

(277) Is ushr, an Islamic tax on agricultural produce, levied on an endowment?

Ushr is payable on an endowment.

(278) What is the ruling on returning an endowment later found to be stolen property?

Third parties (i.e. non-thief and non-owner) who acquire stolen property through an endowment are obligated to return the item to the original owner (and compensate for damage and depreciation), even if they had no prior knowledge of the property’s misappropriation.

(279) How are endowments classified?

Endowments are classified according to the circumstances in which they are given:

- 1) Without a will, during the giver’s lifetime, they are considered to be from the giver’s personal property;
- 2) Without a will, after the giver’s lifetime, they are considered to be part of the bequest;
- 3) In a will, they are considered to be part of the bequest; and
- 4) With or without a will, if they are given under circumstances that ultimately lead to the individual’s death (e.g. illness, war, travel, etc.), they are considered bequests.

(280) May an endowment manager buy, sell or replace peripheral items contained within the endowment?

It is permissible for the endowment manager to buy, sell or replace peripheral items contained within the property in a manner that benefits the endowment without diminishing its overall value. For example, for an endowed mosque the manager might buy new carpeting.

(281) Is endowment of a consumable item permissible?

Property whose consumption materially diminishes the property itself is not valid to endow (e.g. a fruit tree is endowable, while its fruit alone is not).

(282) Is it permissible for the one endowing to allocate a share of the endowment's income for parties other than those already intended as beneficiaries?

It is permissible for the one endowing to allocate a portion of the endowment's income to specified parties other than those already intended as beneficiaries; for example, the endower may allocate a percentage of a property's income to his heirs, and the remaining to the needy.

(283) What is an Islamic endowment (waqf)?

The Prophet (God bless him and give him peace) said: "When a human being dies, his work comes to an end, except for three things: ongoing charity, knowledge benefited from, or a pious son who prays for him." (Muslim)

The establishment of an endowment (waqf) is a recommended act entailing that the owner of a property give up ownership interest in the property (for the sake of God, "to" God) while specifying how it is to be used after its disposition, whereby any financial benefit accruing from the given property be directed to a specified purpose as supervised by some designated manager.

(284) Who is entitled to the proceeds of an endowment?

After the endowment's establishment, the property itself is "owned" in a worldly sense by God, but the proceeds from the property are owned by the endowment manager who spends it according to the endowment's guidelines

GENERAL QUESTIONS

(285) What is my liability with regards to misappropriated goods that are altered in a way that affects their market value?

If a good is neither damaged nor destroyed but merely altered in a manner that increases or decreases the value of the good, the owner is entitled to choose whether to demand compensation or accept the good back as it is.

(286) Is it permissible for the bank to join two accounts into one in the name of both individuals with the understanding that each of the two will have the right to withdraw the entire balance or a part of it even after the death of the other? Also is it lawful to grant a third person wishing to remain anonymous, a right to access the account as well?

It is permissible for the bank to join two accounts into one in the name of both individuals with the understanding that each of the two will have the right to withdraw the entire balance or a part of it even after the death of the other. They are both agents and the agency of one will not be disrupted by the death of the other.

With regard to adding a third member who wishes to remain anonymous, the bank requires that a document be produced with the signature of the present depositor in which he admits that the deposit also belongs to another person whose name is mentioned but must be kept in secret by the highest authorities of the bank.

(287) Is it obligatory to earn a halal income?

It is obligatory to earn a lawful income if one is unable to support oneself and one's dependents without doing so, though it is merely permissible if one is able to support oneself and one's dependents without earning.

(288) What does Islam say about copyright?

It is obligatory to abide by the laws of copyright and intellectual property unless doing so compels one to do something impermissible or refrain from something obligatory according to

the standards of Islamic Sacred Law; it is permissible to store printed or electronic copyrighted material for oneself or to share it with others in a limited manner that does not financially or otherwise harm the copyright owner.

(289) Is a transaction involving dissimilar items sold by measurement deemed valid?

It is permissible to trade two different goods of different weights (e.g. 1 dozen oranges for 2 dozen apples) and, if not transacted on spot, the goods should be kept separately.

(290) Is it permissible to derive benefit in any way from unlawfully gained property?

It is impermissible to buy, sell, trade, use, rent, borrow, finance, invest in, bequest, endow, gift, give in charity, put up as collateral, give a guarantee for or derive any form of benefit from unlawfully gained property that one is certain is unlawfully gained; if there is doubt then it is permissible though it is always superior to avoid the doubtful

(291) Is it lawful for the bank to accept the guarantee of an owner for a contractor constructing a building for the guarantor himself?

It is lawful for the bank to accept the guarantee of an owner for a contractor in the construction of something for the guarantor himself since the guarantor acts as a surety in relation to the work that is taking place between the contractor and the bank. The fact that the construction is undertaken in the guarantor's interest has no bearing on the matter.

(292) What should the bank do with money held in accounts for extended periods of time for which there is no claimant?

These amounts may be given away in charity. If the rightful owner returns, he must be informed of what was done. If he still demands the money, the bank is financially obligated to provide compensation from its charitable accounts

(293) Can a Muslim misappropriate the wealth of a non-Muslim?

Islam does not differentiate between Muslims and non-Muslims in the matter of misappropriation. Some Muslims mistakenly regard the theft of non-Muslim property to be commendable. Rather, any kind of theft is forbidden.

(294) Is it lawful for the bank to receive a commission for Takaful policies based on the number of policies taken out by clients having purchased cars through the bank?

It is lawful for the bank to receive a brokerage fee for serving as an intermediary between the client and the insurance company. This fee is linked directly to the amount of the bank's effort, ascertainable through the insurance documentation.

(295) What is my liability with regards to misappropriated goods that are altered in a way that affects their market value?

If a good is neither damaged nor destroyed but merely altered in a manner that increases or decreases the value of the good, the owner is entitled to choose whether to demand compensation or accept the good back as it is

(296) What should the bank do with outdated, unclaimed cheques issued in favor of clients whose accounts are now dormant?

It is permissible to give these funds away in charity after the bank has made every attempt to contact the client. If the owner returns after the funds have already been given away, he must be informed of what was done and if he still demands payment he must be reimbursed from the general shareholder's account.

(297) Is it permissible to demand compensation upon repayment of misappropriation of property?

It is impermissible to demand any form of consideration for returning misappropriated property, though the owner is entitled, at his own discretion, to make a reduction in the repayment or to make a gift of reward to the one returning, provided the gift is not a condition for the return.

(298) Is it lawful to transfer a right to benefits from a Takaful insurance plan to the purchase pledger at the conclusion of a Murabaha sales contract?

It is lawful to transfer a right to benefits from a Takaful insurance plan to the purchase pledger at the conclusion of a Murabaha sales contract, where he also serves as the bank's agent in settling accounts with the insurance company. Once the damage or loss to the goods if any is recompensed, the client does not require recourse to the bank and may deal directly with the Takaful company alone

(299) Is it permissible to accept welfare payments from the government?

It is permissible to take welfare payments, provided one fulfills the conditions necessary to be eligible; it is impermissible to lie about one's circumstances in order to receive welfare, even if the source of the payments is a non-Muslim government.

(300) Is it permissible to accept or pay earnest money?

It is permissible to accept or pay earnest money (arbun) in the Shariah.

(301) Some debtors have the ability to repay on time but continue to defer. Is the bank permitted to charge them a fee?

It is not lawful to charge anything above the due amount for a delay in repayment regardless of whether the delay is intentional or not. Instead the bank should seek legal recourse against the debtor and at the time of entering into the transaction should include a charity clause entitling the payment of penalties to a designated charity.

(302) Is it permissible for the bank to offer prizes through a drawing as an incentive to lease?

It is permissible for the bank to offer prizes through a drawing as an incentive to lease.

(303) Is it permissible for brokers to charge a fee for their service?

It is permissible for brokers and managers to charge a fee for their services, either as a pre-agreed fixed amount or as a pre-agreed percentage of the stock's price or the fund's net asset value.

(304) What is my liability as regards misappropriated items lost and repayed for and subsequently found?

If items wrongfully taken and subsequently lost had been compensated for and then found, there are two options: 1) if the compensation is equal to or greater than the market value (at the time of misappropriation) the item is not returned; 2) if the compensation is less than the

market value (at the time of misappropriation) the original owner decides whether to take the item or accept the compensation as it is. For lost or unclaimed property, or property found on one's premises, the property should be returned to its rightful owner

(305) Is it permissible to perform the pilgrimage with borrowed money?

A pilgrimage performed with borrowed money is valid provided the conditions for performing pilgrimage are met and the creditor obliges. The debtor is entitled to perform the pilgrimage without taking permission from the creditors if the debtor has no arrears and if his performing the pilgrimage does not hinder his ability to continue repaying the creditor on schedule. It goes without saying that one may not take an interest-based loan in order to perform pilgrimage.

(306) Is the prohibition of interest the same in whether one deposits in a bank located in a Muslim or a non-Muslim country?

The ruling in regard to depositors taking interest is the same whether the bank is located in a Muslim or in a non-Muslim country. The interest earned on the deposits is unlawful for the Muslim to consume or use to his personal benefit.

(307) Who is responsible for misappropriations by children or insane persons?

Guardians are responsible for returning items misappropriated by a child or insane person under their charge, and if applicable, compensating rightful owners or paying charity on behalf of the child or insane person; it is obligatory for one to return items misappropriated during childhood oneself.

(308) Is it lawful for the bank to pay a brokerage fee to a party who brings in people interested in leasing unoccupied properties being offered by it?

Yes, it is permissible to pay such a brokerage fee as such a payment is like a commission paid to one who brings a client or customer to the bank.

(309) May I trade two items sold by weight that are inherently similar but are customarily regarded as dissimilar?

In cases where two products sold by weight are inherently similar to one another but the value addition to one makes it something that is customarily regarded as a different product

altogether, one item should be denominated in cash before transacting it with the other item. Such as with wheat and flour, where both are inherently similar to one another because the base product is still wheat, but because flour is a different end-product altogether having undergone extensive value additions, wheat and flour are regarded as substantively different.

(310) Is it permissible for the merchant or the importer to pay the bank a 20% profit margin on the deal in order to guarantee the transfer of the value of the goods to the exporter within a month? If not, what is the Shariah compliant way of executing such a transaction?

It is not lawful for the importer to pay the bank 20% as profit margin on the deal in order to guarantee the transfer of the value of goods to the exporter as that would be analogous to the importer borrowing the price of the goods from the bank at that rate. The Shariah-compliant way of executing the transaction is by means of a Musharakah.

The bank becomes the merchant's partner in the ownership of goods by purchasing a portion of the goods in foreign currency. Thereafter, each has the right to contract for a commercial partnership which accords both partners the right to dispose of all the goods and share profits on the basis of an agreement between them. In this way the merchant is able to transfer the price of the goods to the exporter in foreign currency paid by the bank. If a loss occurs, it is absorbed by partners in proportion to their share of investment capital.

(311) In the event of a bank offering a tender to the general public, is it permissible for a department of the bank to participate in bidding for that tender?

It is permissible for a department of a bank to bid for a tender offered by the same bank. In case the bid is found to be suitable, it will be permissible for the bank to award the tender to its department.

(312) Is it permissible to accept or pay earnest money?

It is permissible to accept or pay earnest money (arbun) in the Shariah.

(313) Is it permissible to enter into a contract that directly entails or assists in the unlawful?

It is unlawful to enter into a contract that directly entails the unlawful (i.e. work that is itself unlawful or even assists in the unlawful) or to work for an employer (even if one does not participate directly in the transactions) whose primary business is unlawful (e.g. interest-based banking, insurance, futures trading).

(314) Is it lawful for the bank to accept the guarantee of an owner for a contractor constructing a building for the guarantor himself?

It is lawful for the bank to accept the guarantee of an owner for a contractor in the construction of something for the guarantor himself since the guarantor acts as a surety in relation to the work that is taking place between the contractor and the bank. The fact that the construction is undertaken in the guarantor's interest has no bearing on the matter.

(315) What should the bank do with outdated, unclaimed cheques issued in favor of clients whose accounts are now dormant?

It is permissible to give these funds away in charity after the bank has made every attempt to contact the client. If the owner returns after the funds have already been given away, he must be informed of what was done and if he still demands payment he must be reimbursed from the general shareholder's account

(316) Is it permissible to deal with someone who has both lawful and unlawful earnings?

It is permissible to deal with an individual or institution whose lawful and unlawful earnings are mixed, provided the unlawful portion does not exceed the lawful portion, in which case it is impermissible if one is certain of it; if one is uncertain, it is permissible to assume that the lawful portion is greater, to the extent that it is reasonably possible, it is superior to avoid doubtful wealth altogether, though not obligatory.

If one is certain that a given source's unlawful wealth exceeds the lawful portion, one is forbidden from dealing with the source unless one is certain that the very earnings one receives are from the lawful portion.

In determining the lawfulness of a source's earnings, the recipient is only expected to rely on that which is reasonably apparent, such as publicly-available information, rather than attempt to uncover that which is hidden; it is neither recommended nor preferred to seek out information about the unlawfulness of a source's earnings, though if one happens to learn something that was otherwise not apparent, one is expected to act accordingly.

(317) Is it permissible to accept an investment that may have been stolen?

It is impermissible to give or take investment when one is certain the investment itself is stolen; if there is doubt then it is permissible to give or take the investment, though it is always superior to avoid the doubtful.

(318) Can a Muslim misappropriate the wealth of a non-Muslim?

Islam does not differentiate between Muslims and non-Muslims in the matter of misappropriation. Some Muslims mistakenly regard the theft of non-Muslim property to be commendable. Rather, any kind of theft is forbidden.

(319) Am I liable to inform the owner of misappropriation of property upon its return?

When returning misappropriated property, it is not a condition that the taker inform the owner that the property had been misappropriated; rather, the property may be returned by any means possible, whether as a gift, secretly or openly, provided the one returning does not accept any form of consideration in return.

(320) Is it lawful to seek the return of a brokerage fee paid to a broker if the deal is dissolved after the contract is signed?

The amount paid as the brokerage fee is the right of the broker and may not be taken back after the contract is signed regardless of whether or not the contract is subsequently dissolved.

(321) Is it permissible for the bank to offer assistance in cash or kind to its current and investment account holders in return for the business they conduct with the bank?

It is permissible for the bank to offer assistance in cash or kind to its current and investment account holders provided that this is not stipulated as a condition at the time of the opening of the account, or becomes an expectation or customary practice. It is only permissible for the bank to provide assistance as a gesture of goodwill.

GIFTS QUESTIONS

(322) Is it permissible to take back a gift?

It is impermissible to take back a gift, unless the recipient agrees to its return (except for children and the insane, whose permission is invalid).

(323) What are the rules pertaining to gift giving?

Gifts, or hiba, must have an offer, an acceptance, and possession. The offer should be made in such a way that the intention of the person giving the gift should be clearly understood by the one receiving it. This may take place without the exchange of a verbal offer and acceptance.

The intention of the gift giver and the acceptance of the receiver may be expressed merely by their manner, such as a nod. Once a gift is sent to a person and he takes possession of it, it is equivalent to an exchange of an offer and acceptance between both parties.

In a sale and purchase transaction, the offer and acceptance must take place while both parties are present, however, in the offer and acceptance of a gift, the presence of both parties together is not a prerequisite. In the event that after an offer and before an acceptance has taken place either party passes away, the offer and acceptance is automatically annulled. A contract of gift may not be made for the future.

(324) What is the ruling on gifts given to children?

Gifts to children are of two types: 1) gifts given to the parent or guardian for the ostensive purpose of benefiting the child, are the property of the parent or guardian (who is closest in relationship to the giver) who may use the gift in any manner they choose; and 2) gifts given directly to the child, in which case the child owns the gift and the parent or guardian (in the order of guardianship) keep it on the child's behalf.

(325) Would it be permissible for an individual to gift his share in an undivided, shared property?

It is impermissible to gift one's share in an undivided property shared by two or more individuals, unless all the owners of the property gift the entire property or the gift giver's property is divided from the rest, provided the property is dividable.

(326) Is it permissible to take back a gift?

It is impermissible to take back a gift, unless the recipient agrees to its return (except for children and the insane, whose permission is invalid).

(327) What are the rules pertaining to gift giving?

Gifts, or hiba, must have an offer, an acceptance, and possession. The offer should be made in such a way that the intention of the person giving the gift should be clearly understood by the one receiving it. This may take place without the exchange of a verbal offer and acceptance.

The intention of the gift giver and the acceptance of the receiver may be expressed merely by their manner, such as a nod. Once a gift is sent to a person and he takes possession of it, it is equivalent to an exchange of an offer and acceptance between both parties.

In a sale and purchase transaction, the offer and acceptance must take place while both parties are present, however, in the offer and acceptance of a gift, the presence of both parties together is not a prerequisite. In the event that after an offer and before an acceptance has taken place either party passes away, the offer and acceptance is automatically annulled. A contract of gift may not be made for the future.

(328) Would the gift be returnable if either the giver or the recipient dies?

No gift is returnable once either the giver or the recipient dies.

(329) May a person coerce another into giving a gift? And may a person force the other into accepting a gift?

The giver and the recipient must agree to the gift; a gift coercively taken from the giver or forcefully given to the recipient is invalid; agreement may be written, spoken or unspoken (e.g. a nod).

(330) What is the exact time before which the giver may reclaim his gift?

The giver may reclaim a gift before the recipient takes constructive possession of it, but not after, however insignificant the gift.

(331) Is a gift given by mistake considered a valid gift?

A gift given in error is still considered to have been given validly and may not be reclaimed by the giver unless the recipient agrees to its return. Once the gift is validly reclaimed, ownership rights return to the claimant.

(332) May the giver of the gift attach restrictive conditions to the usage of the gift?

It is impermissible for the giver to impose conditions on how the gift will be used by the recipient.

(333) Must the gift be separated from the giver's property?

The gift should be separated from the giver's property and until it is separated it remains the property of the giver, even if he considers the gift as having been given.

INSURANCE QUESTION

(334) May I work for an employer whose primary business is insurance?

It is unlawful to work for an employer whose primary business is insurance (even if one does not participate directly in the transactions), unless one has absolutely no other means of supporting one's dependents (such as selling the excess of one's saleable wealth or accepting work at a low-paying job), in which case one may remain with the unlawful work as long as one is actively looking for another source of income and seeking Allah's forgiveness and help in the process.

(335) In the case of receiving Takaful benefits for goods lost in a fire, is it permissible to seek the market value of the goods on the day they were destroyed or their replacement value?

The insured is entitled to receiving benefits equal to the actual amount of damage experienced based on the market value of the goods on the day of the accident or fire.

(336) Are conventional insurance contracts permissible in Shariah?

Abu Hurayra (Allah be well pleased with him) said, "The Messenger of Allah (Allah bless him and give him peace) prohibited sales of 'whatever a pebble thrown by the seller hits' and sales in which there is gharar (contractual uncertainty leading to dispute)". (Muslim) Insurance is a contract between two parties in which an insured party pays an insurance premium in order to secure a compensatory payment by the insurer in the event of loss or damage to an insured entity.

The contractual uncertainty inherent to insurance renders all forms of insurance buying, selling, dealing and investing unlawful. An investment is a cooperative effort combining labor and capital inputs to create goods, services and profits, while undertaking shared risk. Insurance is not an investment because there is nothing in which to invest. Insurance trades in risk; but risk is just a measure, not a saleable commodity.

(337) Is it permissible to insure buildings against fire?

It is lawful to insure buildings against fire so long as the benefit payments are commensurate to the amount of actual damage.

(338) Is it permissible to purchase healthcare insurance, keeping in view high healthcare costs?

It is not permissible to purchase insurance when one is not legally obligated to purchase insurance (e.g. for property, goods, travel); though healthcare costs in some countries are so high that scholars now permit one to purchase medical insurance provided there is no social healthcare program in one's country (e.g. United States), though scholars still deem healthcare insurance impermissible in those countries that provide social healthcare programs (e.g. Canada).

It is permissible to receive the benefits, including cash payment, of a health insurance plan if one's employer or government offers the plan as a part of their policy.

(339) What does the Shariah say about compulsory forms of insurance in some countries?

As for the sin of compulsory forms of insurance in some countries, namely automobile, medical, property, and the like, the sin devolves to the one making the law. In many countries auto, property and personal insurance, among others, are legal requirements. One avoids these to the extent legally possible, but pays the amount necessary to fulfill the minimum legal requirement; the ones imposing the laws, not the ones forced to comply, ultimately bear the burden of having contravened the Shariah.

If one is legally obligated to purchase insurance, it is permissible to exceed the minimum legal insurance requirement if this means paying a lower insurance premium (e.g. one purchases comprehensive insurance instead of third party insurance because it is less expensive even though it provides more coverage), but it would be impermissible to exceed the minimum legal insurance requirement if this means paying a higher insurance premium (e.g. one purchases comprehensive insurance and third party insurance in order to receive fuller coverage); the general principle being that one purchases the minimum legal requirement of insurance at the minimum cost to oneself.

(340) Is it permissible for the client in a Murabaha to determine the sort of Takaful coverage the goods are to receive, particularly when he wants to exclude coverage that raises the price of the premiums when such coverage might be important to the bank?

The client is not in a position to determine the type of coverage that will be sought for Murabaha goods purchased through the bank.

(341) Is it permissible to seek Takaful insurance for the value of goods plus 10% in order to include shipping expenses in addition to the cost of premiums?

Takaful coverage is not lawful for an amount greater than the actual value of goods. It should be a sum that represents actual value, inclusive of expenses

(342) Is it permissible for the bank to seek indemnity insurance policy covering risks such as theft, cash in transit, fraud, forged documents, valuables and the like?

It is permissible for the bank to seek Takaful against the types of losses mentioned so long as the amount of repayment does not exceed the amount of actual loss or damage.

(343) The value of certain possessions of the bank is greater at times and less at others; under these circumstances, which value should be used for the determination of the amount of insurance to be paid and what is the ruling with regard to payment of benefits?

The valuation of such possessions of the bank should be carried out when the Takaful contract is contracted for. The premiums must be determined based on this valuation and the benefits paid out must be commensurate to the amount of actual damage calculated based on the value of goods on the day the damage occurs.

(344) Is it permissible to seek Takaful insurance for the value of goods plus 10% in order to include shipping expenses in addition to the cost of premiums?

Takaful coverage is not lawful for an amount greater than the actual value of goods. It should be a sum that represents actual value, inclusive of expenses.

(345) Is it permissible for the client to have the goods he pledges to purchase by way of a Murabaha through the bank, insured at his own expense?

It is not lawful for the client to insure the goods at his own expense since the goods are the property of the bank. It is only permissible that he insure them in the capacity of the bank's agent with the understanding that he will recover the amount spent on insurance from the bank either by means of credit to his account or by having it deducted from the price of the goods in the Murabaha.

(346) Takaful insurance is purchased for a project to construct headquarters for a certain amount of premium giving coverage for labour and materials etc. Additional contracts are concluded with subcontractors for safety, electricity, air-conditioning and elevators based on the agreement that they will pay a part of the insurance premiums for the project each in proportion to the value of their work. In the event that the amount collected from them is greater than the cost of the premiums to be paid is it lawful for the bank to keep the excess amount?

It is not lawful for the bank to keep any amount in excess of the premiums to be paid; it must be returned to the subcontractors.

(347) Is it lawful for the bank to insure valuable property, like sums of cash, cheques and trade bills against fire, theft, loss or destruction?

It is permissible to insure such items on the condition that the amount of Takaful coverage is commensurate with the amounts of the trade bills and cheques etc, actually maintained in the safes of the bank so that the benefit payments to be made by the Takaful company are kept in proportion to the actual amount of loss and no more.

(348) Is it permissible to purchase healthcare insurance, keeping in view high healthcare costs?

It is not permissible to purchase insurance when one is not legally obligated to purchase insurance (e.g. for property, goods, travel); though healthcare costs in some countries are so high that scholars now permit one to purchase medical insurance provided there is no social healthcare program in one's country (e.g. United States), though scholars still deem healthcare insurance impermissible in those countries that provide social healthcare programs (e.g. Canada).

It is permissible to receive the benefits, including cash payment, of a health insurance plan if one's employer or government offers the plan as a part of their policy.

GUARANTEE QUESTIONS

(349) What is the Shariah ruling with regard to the bank issuing letters of guarantee on behalf of its clients to individuals or financial institutions?

It is lawful for the bank to issue letters of guarantee on behalf of its clients; however, it is not lawful to take a fee in return for the guarantee unless the fee is based on actual expenses. The bank should take every measure to ensure that the letter of guarantee is not issued to institutions dealing in interest.

(350) The bank concluded a general undertaking to purchase international goods from a stock exchange, in order to sell them to a client on deferred payment. The bank obtained a binding promise from the client. Likewise, the bank is also bound by the promise to sell. What is the position of the Shari'ah on this matter?

According to the Shari'ah, it is not permissible to make the promise binding to both parties, that is the bank and the client. This is because a binding promise on both parties is similar to a contract, whereas this is not a contract. In this case, it is compulsory for a binding promise to be limited to one party only. The most suitable approach is for the bank to make the client bound by the promise.

(351) Is it lawful to charge a percentage based fee for documentary credit or letters of guarantee?

It is not permissible for the bank to charge a percentage-based fee for letters of guarantee or documentary credit. It is lawful, however, for it to charge an amount for the services it offers to its clients. Such a sum may vary with the value of the guarantee or documentary credit in accordance to the differing degrees of administrative services required.

(352) Is it lawful to charge a fee for providing a guarantee?

It is unlawful to charge a fee for providing a guarantee. If providing the guarantee actually incurs cost, such as for services, it is lawful to charge a fee but not for issuing the guarantee itself.

(353) What is the Shari'ah ruling with regard to obtaining a guarantee from the purchase pledger in a Murabaha sale to ensure the arrival of merchandise in good condition?

It is permissible from a Shari'ah perspective to obtain a guarantee from the purchase pledger in a Murabaha sale to ensure the arrival of merchandise in good condition.

(354) May the fees of the bank increase or decrease with the value of a guarantee particularly when the services required for each guarantee differs in proportion to its value?

It is not lawful to charge a fee for issuing a letter of guarantee since it is a contract for which compensation is not taken. It is permissible however to charge a fee for the effort expended by the bank in the process of issuing a letter of guarantee for actual services.

(355) Under what circumstances are guarantors not obliged to fulfill a contract on behalf of an obligor?

Guarantors are not obliged to fulfill a contract on behalf of an obligor unable to do so if either:

- 1) the obligation is not yet due, or
- 2) the creditor grants a period of respite and now asks for fulfillment of the obligation during the period of respite.

(356) When a client forwards a request for the purchase of goods and the bank decides that it requires a guarantee before going through with a Murabaha, is it permissible to seek a check of guarantee from the surety?

It is permissible for the bank to seek a check of guarantee from the surety upon the receipt of which a letter will be issued to him explaining that the check will only be cashed in case of non-payment by the client. Even if one payment is delayed, all subsequent payments will fall due.

(357) Is it permissible for an Islamic bank to guarantee the work a client intends to do for a conventional bank?

It is not permissible for an Islamic bank to guarantee equipment, buildings or contracts for any form of work a client intends to do for a conventional bank.

(358) Is it permissible for an Islamic bank to request its client to present a guarantee from a conventional bank in order to close a deal?

It is not permissible for an Islamic bank to request its client to present a guarantee from a conventional bank.

(359) Is it lawful for a client holding an investment account with the bank to stand surety for an institution seeking financing for a Murabaha deal from the bank. May he seek a share of the profits earned from the institution's commerce in the goods guaranteed to the bank?

The client's suretyship for the institution is lawful. The bank freezes the client's account for the amount owed to it by the institution on the condition that the returns from the investment during the period of the freeze accrue to the client.

It is not lawful however for the client to share in the profits of the institution in return for its suretyship as suretyship is a voluntary contract.

(360) Is it permissible for a party to guarantee the principal or profit of another party in a contract?

It is impermissible for any party to guarantee the principal or profit of another party in a contract. A third party may, however, serve as guarantor.

(361) Under what circumstances are guarantors not obliged to fulfill a contract on behalf of an obligor?

Guarantors are not obliged to fulfill a contract on behalf of an obligor unable to do so if either:

- 1) the obligation is not yet due, or
- 2) the creditor grants a period of respite and now asks for fulfillment of the obligation during the period of respite.

(362) When a client opens an account for documentary credit it is customary that the amount is considered approximate, varying upward or downward, for instance, 10%. When the client terminates this line of credit how does the bank calculate its fees?

The bank should calculate its fees on the basis of the agreement between the two parties and in return for a banking service. It is of no consequence if the amount is greater or less than the initial estimate since when the bank determines the fee it must consider actual expenses only regardless of the credit amount.

(363) Is it lawful for a client holding an investment account with the bank to stand surety for an institution seeking financing for a Murabaha deal from the bank. May he seek a share of the profits earned from the institution's commerce in the goods guaranteed to the bank?

The client's suretyship for the institution is lawful. The bank freezes the client's account for the amount owed to it by the institution on the condition that the returns from the investment during the period of the freeze accrue to the client.

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(365) Is it lawful to charge a fee for providing a guarantee?

It is unlawful to charge a fee for providing a guarantee. If providing the guarantee actually incurs cost, such as for services, it is lawful to charge a fee but not for issuing the guarantee itself.

INTEREST QUESTIONS

(366) May I transact with someone who I suspect earns from impermissible means?

The permissibility of transacting with a source whose earnings might be unlawful depends on the extent to which the source's wealth is unlawful and the degree of certainty to which one determines the extent of this unlawfulness. One should determine the unlawfulness of the source's earnings according to that which is reasonably apparent; it is neither recommended nor preferred to seek out information about the unlawfulness of a source's earnings.

(367) Am I liable for any interest dealings of the party I am transacting with?

One is not answerable for the interest dealings of the party with whom one transacts unless one is also directly involved in the interest dealings; for example, the real estate agent who assists in the purchase of a house is not answerable for the interest-based mortgage the buyer

acquires later unless the real estate agent also assists in acquiring the mortgaging, at minimum, by merely providing the buyer with guidance.

(368) Are two amounts of cash, each in a different currency, considered a “like good” for purposes of avoiding riba?

As regards cash, “like” refers only to the same currency.

(369) May I take a loan in which the lender makes a monetary investment in expectation of a percentage payout?

It is impermissible to take any kind of loan in which the lender makes a monetary investment in expectation of a percentage payout, because invariably some difference will occur between the investment and the payout, a difference that constitutes riba (e.g. a home equity loan that invests \$10,000 in a property in return for 10% of the property’s selling price); it would be permissible to instead ascribe a percentage figure to a monetary investment and make a payout at the same percentage (e.g. a home equity loan that invests \$10,000, or 10%, in a property in return for 10% of the property’s selling price), provided both lender and borrower share in any damages (not caused by any particular individual’s negligence) to the property to the extent of their ownership share.

(370) Are interest-bearing accounts permissible?

All interest-bearing bank accounts, however low the interest rate, are impermissible to maintain; in the rare event that there is absolutely no access to an interest-free account, there is a dispensation to maintain an interest-bearing account for the individual who seeks the additional financial security of a bank; this is only permitted on the condition that no other option exists (even if reasonably accessible outside one’s city) and that the interest that one earns is returned to the bank or given to a Muslim or non-Muslim charity or a zakat-eligible recipient (with the intention of eliminating the unlawful wealth rather than with the intention of earning reward) accompanied by a sincere repentance.

(371) May I charge a monetary penalty on a monetary payment?

It is unlawful to charge a monetary penalty on any form of monetary payment (e.g. fees for late rental payments, car payments, loan installments, etc.), though it is permissible to enter into a separate parallel contract beforehand whereby the one paying late is legally compelled to give money to a specified charity in the event of late payment, thereby fulfilling the lender’s need to create a deterrent.

(372) What is the Al-Azhar Fatwa On Bank Interest ?

The legal opinion of some of Al-Azhar's scholars that interest is permissible in some situations is unanimously rejected by all other scholars of Ahl al-Sunna wa al-Jama'a.

(373) How can I convert a conventional interest-based sale into one acceptable in Shariah?

When a good or service (not cash, gold, silver, securities or similar tradable instruments) is offered for sale through an interest-based transaction (e.g. car loan, property mortgage, education loan, etc.), it is permissible for the buyer to propose to the vendor the following: that the vendor combine all future principal and interest payments into one lump-sum amount and divide this new amount into installments, provided any late payment charges go to a designated charity rather than to the vendor (e.g. a house sells for \$150,000 with a 7% interest payment payable in monthly installments over a 20 year period; the buyer proposes that the bank negotiating the transaction add the \$150,000 principal to all future interest payments, and divide the new amount into monthly installments); it would be permissible to vary the installments (i.e. flat, increasing or decreasing installment sizes) provided all the amounts are pre-agreed; such a transaction avoids the *riba* created by interest payments and penalty charges, allows the seller to sell at any price he chooses, and permits the buyer to pay in installments.

(374) May I pay the bank fee for services rendered by it on my behalf?

It is permissible to pay a bank fee or transaction fee for such services as maintaining an account, using an automated teller machine, purchasing or selling stocks, Internet trades and the like, but not for the service of providing a loan.

(375) May I enter into a transaction with someone whose income is from impermissible means?

It is impermissible to enter into a transaction (e.g. partnering in a business, borrowing, receiving a gift, etc.), even if a Shariah-compliant one, with an individual whose worth derived directly from interest or other unlawful means is greater than 50% when this is certain, where interest involvement for this purpose is measured as the financial extent of the interest dealings (e.g. if 5% of a \$100 transaction is interest, \$5 of the transaction, not the entire \$100, will be considered unlawful for the purposes of determining the unlawfulness of the person's wealth, even though the entire transaction is unlawful); it is offensive to enter into a transaction with an individual when there is doubt about whether the worth that he derived directly from interest or other unlawful means is greater than 50%.

(376) May I deal in interest with the intention of giving it away in charity?

It is impermissible to deal in interest with the intention of giving the benefit away in charity (the forbidden always takes precedence over the recommended).

(377) What must I do if I am involved in interest?

If one is already involved in interest, one is obligated to leave all such transactions as soon as reasonably possible; if leaving the transaction is not possible such that one anticipates harm to oneself, one's dependents, one's property or one's religion, then one is obligated to take all necessary means to conclude the transaction (e.g. repay all interest-based loans) as soon as possible; the goods transacted in an interest-based transaction and the resulting profits earned thereby are themselves lawful to own and use (e.g. a house purchased on an interest-based mortgage and sold at profit), but the imperative to leave all interest-based transactions remains.

(378) Doesn't the prohibition of riba apply only to lending to the poor who are forced to borrow at high rates?

Besides the fact that the prohibition refers to everyone, at a practical level it is impossible to apply a quantitative standard (interest rates) to a qualitative circumstance (poverty). Who determines who is poor? Does one set a poverty line based on zakat eligibility? Will banks be forced to lend to these poor? Will the "risky" poor be charged higher rates than the regular poor? Before long the standards by which money is allocated become identical to conventional interest-based standards. Because there necessarily can be no quantifiable cut-off between what is an "interest rate" and what is a "usurious rate" further supports the Islamic view that the term riba does not distinguish between interest and usury in the Quran.

(379) May I enter into a transaction with someone whose income is from impermissible means?

It is impermissible to enter into a transaction (e.g. partnering in a business, borrowing, receiving a gift, etc.), even if a Shariah-compliant one, with an individual whose worth derived directly from interest or other unlawful means is greater than 50% when this is certain, where interest involvement for this purpose is measured as the financial extent of the interest dealings

(e.g. if 5% of a \$100 transaction is interest, \$5 of the transaction, not the entire \$100, will be considered unlawful for the purposes of determining the unlawfulness of the person's wealth, even though the entire transaction is unlawful); it is offensive to enter into a transaction with an individual when there is doubt about whether the worth that he derived directly from interest or other unlawful means is greater than 50%.

(380) Am I liable for any interest dealings of the party I am transacting with?

One is not answerable for the interest dealings of the party with whom one transacts unless one is also directly involved in the interest dealings; for example, the real estate agent who assists in the purchase of a house is not answerable for the interest-based mortgage the buyer acquires later unless the real estate agent also assists in acquiring the mortgaging, at minimum, by merely providing the buyer with guidance.

(381) What constitutes a direct involvement in interest-based transactions?

Unlawfulness depends on how direct one's involvement is to the interest dealings: direct involvement entails that one participates in the actual execution of an unlawful transaction; the one who buys, sells, trades, witnesses, records, calculates, recommends, instructs or in any way directly assists in an interest-based transaction during its execution is culpable (e.g. car buyer who contracts an interest-based lease; homeowner who takes a mortgage; futures and options trader; insurance salesman; loan officer); if an accountant, for instance, merely records a transaction that has already taken place, the involvement is not considered "direct," and therefore remains permissible, though it is always superior to avoid the doubtful

(382) May I maintain an interest-free bank account in a conventional bank?

It is recommended to maintain bank accounts at Islamic banks, though it is permissible to maintain an interest-free account in a conventional bank.

(383) When are goods considered unlike each other for purposes of avoiding riba?

If substantive value addition to the good entirely transforms its original form and content (e.g. oak wood and oak furniture), then the goods are considered unlike, regardless of weight. In cases where the end product is inherently similar to the original product, such as with gold jewellery, scholars advise that the gold should first be denominated in cash before exchanging it for jewellery.

(384) May I sell or assist another in buying a credit card that charges interest?

It is impermissible to assist in the purchase of a credit card that charges an interest rate, and it is offensive to assist in the purchase of a credit card that only charges an interest rate after a reasonable grace period; in the former case one directly assists in the sin because the interest rate is a direct consequence of owning the credit card, whereas in the latter case one indirectly assists in the sin because the onus of prompt repayment is on the credit card owner.

ISTISNA QUESTIONS

(385) Is it permissible to sell agricultural products under an Istisna contract?

The Istisna contract is valid for manufactured goods, not agricultural products. However, if agricultural products are subjected to manufacturing that transforms them from their natural state—such as juice extracted and processed from fruit—it would be permissible.

(386) Is it permissible to finance a party by manufacturing a mutually agreed upon item and retaining part of the manufactured product as consideration?

It is permissible in an Istisna to manufacture a mutually agreed upon item and retain, as consideration, a specified share of the manufactured product. This share may be sold in the market, with the difference between the financing and the sale representing the profit.

(387) May the financier in an Istisna agreement play the role of a manufacturer?

It is permissible for the financier to play the role of manufacturer: for example, a financial intermediary like a bank can enter into an Istisna agreement with a home buyer whereby the bank agrees to build the house (by hiring a contractor in a separate agreement) and the buyer agrees to buy the house; the bank assesses its cost and adds its profit and sells the house to the buyer, whether in installments or as a lump-sum before, during or after production.

(388) What is the seller responsible for in an Istisna with respect to the asset prior to delivery?

The seller bears all responsibility related to ownership of the asset prior to its delivery to the purchaser. This includes responsibility towards any damage to the asset, maintenance expenses, and, if necessary, insurance.

(389) Which party in an Istisna bears any additional costs imposed by government regulation after the contract is signed?

It is permissible to add a clause in an Istisna contract stating that additional financial commitments resulting from new government regulations imposed during the contract are the liability of the Istisna requestor.

(390) Is it permissible for a bank to appoint a third-party as an agent to manage and hand over a construction assignment in an Istisna?

It is permissible for a bank to appoint an agent to oversee the construction project, approve payments to the contractor, and receive the completed work and deliver it to the bank's client.

(391) Is it permissible to purchase published works under an Istisna contract with deferred delivery and advance payment?

It is permissible to purchase published works under an Istisna contract and to defer delivery. Payment may be either advance or deferred. It is also permissible to lower the price for deferring delivery.

(392) Can the financier cancel the Istisna contract in case the goods delivered do not conform to the specific instructions given by the financier?

The financier reserves the right to reject products not manufactured to specification, though must accept items manufactured equal to or superior to expectations. The contract may be cancelled unilaterally by either party before manufacturing commences, but not after.

(393) In the event that a bank's Istisna client requests changes to a manufactured asset, who pays?

The parties to the Istisna contract may alter the contract and clearly specify the amount payable for the agreed-upon changes. The bank should not commence such changes before revising the Istisna contract and agreeing upon the price.

(394) Is it permissible to contract with a party and accept advance payments for an asset that is under construction and will be delivered upon completion?

It is permissible to contract an Istisna agreement in which an under-construction sale asset will be delivered in the future upon completion, while the sale price is paid in installments from the date of the contract.

(395) Is it permissible for a bank to appoint a third-party as an agent to manage and hand over a construction assignment in an Istisna?

It is permissible for a bank to appoint an agent to oversee the construction project, approve payments to the contractor, and receive the completed work and deliver it to the bank's client.

(396) In the case of a bank carrying out construction work for a client under an Istisna, is it permissible for the bank to make a separate agreement with the client agreeing to supervise the contractor's implementation of the contract?

It is permissible for a bank to draft a separate contract agreeing to represent the client in supervising the contractor's implementation of the contract, provided that such a contract is kept separate from the bank's contract with the contractor and the bank's Istisna contract with the client.

(397) Is it permissible to finance a party by manufacturing a mutually agreed upon item and retaining part of the manufactured product as consideration?

It is permissible in an Istisna to manufacture a mutually agreed upon item and retain, as consideration, a specified share of the manufactured product. This share may be sold in the market, with the difference between the financing and the sale representing the profit.

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It is permissible to purchase published works under an Istisna contract and to defer delivery. Payment may be either advance or deferred. It is also permissible to lower the price for deferring delivery.

(401) Is it permissible for a bank to obtain discounts with a construction contractor in an Istisna without passing the discounts on to the requestor?

It is permissible for the bank to obtain discounts from the contractor without passing them on to the requestor since these are two separate contracts: one contract between the bank and the Istisna requestor and the other between the bank and the contractor.

(402) Is it permissible to set profit as a percentage of cost in an Istisna?

It is not permissible to measure profit as a percentage of the cost in an Istisna contract.

(403) Is it permissible for a bank to contract with a client to finance construction on land owned by the client in case the client had already contracted with a contractor to construct on the same land but failed to honor that contract?

It is permissible to contract with such a client. The client must first be asked to rescind its previous contract with the contractor according to the terms and conditions set out in that contract. The bank has absolutely no liability with regards to the previous contract since it was not a party to it.

Any outstanding debts are considered the responsibility and liability of the customer. Once the previous contract is terminated, the bank shall draft a fresh contract with the client. Due care

should be taken to verify solvency of owner and ability to pay on due date. The bank is under no obligation to hire the contractor who was previously hired by the client.

(404) Is it permissible for the Istisna requestor himself to manufacture what he requests?

It is not permissible for the Istisna requestor himself to manufacture what he requests.

LOAN QUESTIONS

(405) What protective measures must the borrower take with regard to the borrowed item and its return?

It is obligatory for the borrower to safeguard the borrowed item and return it in its complete form; if the item is unique and irreplaceable (e.g. animals, jewelry) the item itself must be returned; if the item is replaceable (e.g. money, oil, sugar) then an equivalent amount must be returned, regardless of the duration of the loan or the change in market value.

When returning a replaceable item, it is permissible to return the same item of a superior quality (e.g. long grain rice instead of short grain rice) if the lender accepts, but not an item of inferior quality; to avoid riba, it remains a condition that the amount returned be equal in quantity (i.e. weight, measure, count, etc.) if not identical in quality.

(406) Are loan transfer's absolute, freeing the transferor of the obligations it owed to the lender?

Transfers are complete and final (unless they are transferred back in a new agreement) and once the transfer is effected the lender cannot hold the borrower accountable for the new party's actions.

(407) If the lender passes away or becomes insane, to whom should the borrower return the borrowed item?

If the lender passes away, or becomes insane or incapacitated, the borrower is responsible for returning the item to the lender's heirs (if the lender passes away) or the lender's guardian (if the lender becomes insane or incapacitated).

(408) What is the liability for the borrower in relation to the borrowed item?

The borrower is responsible only for loss, damage or theft resulting from his own negligence, but not otherwise; the borrower is responsible for any loss, damage or theft occurring after the item was due to be returned, whether due to his own negligence or not.

(409) Can borrowed money be repaid in kind instead of in cash?

Provided the lender agrees, the form of repayment can be different from the form of the original loan (e.g. a cash loan repaid in its equivalent in wheat).

(410) Would it be permissible for the borrower to repay the loan amount with some extra value above the principal?

It is permissible for the borrower to repay an amount greater than the size of the loan as a gesture of goodwill (without letting such a gesture become customary practice), but impermissible for the borrower to promise to pay a greater amount at the time of borrowing or for the lender to demand a greater amount.

(411) Who is responsible to pay for damage to lent property?

The lender is responsible for paying for any damages caused by normal wear sustained during the property's intended use. The borrower is responsible for paying for any damages caused by himself, a third party, or acts of God during the property's use, whether the damage occurs during usage intended by the lender or not.

(412) Is it permissible to intentionally delay repayment of loan?

It is impermissible for a debtor possessing the means to pay the creditor to delay payment unnecessarily beyond the agreed upon date.

(413) Is it permissible to borrow interest-free money without both the parties agreeing to a fixed repayment date?

It is impermissible to borrow money without both parties agreeing a fixed repayment date (or fixed repayment schedule).

(414) Is it permissible to make an interest-free loan to a client on condition that he deal exclusively with the bank when buying and selling foreign currency or at least use it as an intermediary?

It is not lawful for the bank to make a loan and attach any condition that provides the bank with direct or indirect benefit.

(415) Is the borrower entitled to any early payment discounts?

It is impermissible for the borrower and lender to agree a discount on the loan if the borrower repays before the due date.

(416) May property be lent free of rent?

It is permissible to lend property free of rent while stipulating that the borrower pay for repairs related to his use.

(417) Would it be permissible for the borrower to repay the loan amount with some extra value above the principal?

It is permissible for the borrower to repay an amount greater than the size of the loan as a gesture of goodwill (without letting such a gesture become customary practice), but impermissible for the borrower to promise to pay a greater amount at the time of borrowing or for the lender to demand a greater amount.

(418) Is it permissible for the lender to derive any monetary benefit from the disbursement of a loan?

The loan should not derive any benefit to the lender, whether monetarily, in-kind, gifted, as a favor, or in the form of a service; unless the borrower does so voluntarily and the lender accepts once the loan is made.

(419) When lending money, may the lender specify how the borrower is permitted to use the money?

The lender is not permitted to specify how the money may be used or impose restrictions on how it may not be used.

(420) What protective measures must the borrower take with regard to the borrowed item and its return?

It is obligatory for the borrower to safeguard the borrowed item and return it in its complete form; if the item is unique and irreplaceable (e.g. animals, jewelry) the item itself must be returned; if the item is replaceable (e.g. money, oil, sugar) then an equivalent amount must be returned, regardless of the duration of the loan or the change in market value.

When returning a replaceable item, it is permissible to return the same item of a superior quality (e.g. long grain rice instead of short grain rice) if the lender accepts, but not an item of inferior quality; to avoid riba, it remains a condition that the amount returned be equal in quantity (i.e. weight, measure, count, etc.) if not identical in quality.

(421) Is it permissible to intentionally delay repayment of loan?

It is impermissible for a debtor possessing the means to pay the creditor to delay payment unnecessarily beyond the agreed upon date.

(422) What is the ruling on attaching conditions to the loan contract?

The loan should be free of binding conditionality (not including the conditions of collateral or guarantor, which are permissible); forbidden are conditions that compel the borrower to do something or refrain from something outside of the agreement to repay the loan; the lender may, however, inquire about repayment and insist on timeliness.

(423) Can a lender stipulate how a borrowed item is used?

The restriction of unconditionally does not include valid stipulations for irreplaceable borrowed items relating to usage of the item, since a condition of using an irreplaceable item is that it is returned in the same condition, and certain kinds of usage affect the condition of a borrowed item (e.g. it is permissible to say: “you may only drive the car during daylight hours” if the lender feels that driving it at night may be dangerous); the borrower is liable for loss, damage or theft resulting from disobedience to a valid stipulation; it is impermissible, however, to restrict the usage of replaceable borrowed goods (e.g. it is impermissible to say: “you may only use this money to buy food”), because unlike trusts, commissions, and investments, the borrower is not bound under any obligation other than a general one to return what is borrowed.

(424) May the borrower, before borrowing, guarantee the creditor against loss, damage or theft?

It is impermissible for a borrower to guarantee against loss, damage or theft before borrowing; responsibility for loss, damage or theft is determined at the time it occurs, whether due to the borrowers negligence, in which case the borrower is liable, or otherwise, in which case the lender is liable.

(425) Who is responsible to pay for damage to lent property?

The lender is responsible for paying for any damages caused by normal wear sustained during the property’s intended use. The borrower is responsible for paying for any damages caused by himself, a third party, or acts of God during the property’s use, whether the damage occurs during usage intended by the lender or not.

(426) May property be lent free of rent?

It is permissible to lend property free of rent while stipulating that the borrower pay for repairs related to his use.

(427) May the borrower receive an early payment discount on the loan?

It is impermissible for borrower and lender to agree a discount on the loan if the borrower repays before the due date.

(428) May one lend money or property when one suspects unlawful usage?

It is impermissible to lend money or property when one is certain that it will not be used lawfully, and offensive when one doubts whether it will be used lawfully

(429) Can a lender stipulate how a borrowed item is used?

The restriction of unconditionality does not include valid stipulations for irreplaceable borrowed items relating to usage of the item, since a condition of using an irreplaceable item is that it is returned in the same condition, and certain kinds of usage affect the condition of a borrowed item (e.g. it is permissible to say: “you may only drive the car during daylight hours” if the lender feels that driving it at night may be dangerous); the borrower is liable for loss, damage or theft resulting from disobedience to a valid stipulation; it is impermissible, however, to restrict the usage of replaceable borrowed goods (e.g. it is impermissible to say: “you may only use this money to buy food”), because unlike trusts, commissions, and investments, the borrower is not bound under any obligation other than a general one to return what is borrowed.

(430) Is it permissible to make an interest-free loan to a client on condition that he deal exclusively with the bank when buying and selling foreign currency or at least use it as an intermediary?

It is not lawful for the bank to make a loan and attach any condition that provides the bank with direct or indirect benefit.

(431) Can borrowed money be repaid in kind instead of in cash?

Provided the lender agrees, the form of repayment can be different from the form of the original loan (e.g. a cash loan repaid in its equivalent in wheat).

MODARABAH QUESTIONS

(432) Is it permissible for the parties to a Mudarabah contract to convert it into a Musharakah, and subsequently attract more capital through the issue of Shariah-compliant financings?

It is permissible to convert a Mudarabah into a Musharakah and to raise capital through financings. It should be noted, however, that before entering into a contract, all parties should agree on definite objectives of their Mudarabah partnership in order to avoid any future ambiguities.

(433) In the event that a Mudarabah's capital is lost, damaged, or stolen before its distribution among the working partners by the investor, what happens to the Mudarabah partnership?

The partnership is cancelled and, if so agreed, renewed.

(434) Is it permissible for the investor to demand a guarantee from the working partner against his investment?

It is permissible for the investor to demand a guarantee from the working partner against his investment.

(435) Is it permissible for a bank to use the money collected as a surety for investments under a Mudarabah contract?

It is permissible for a bank to use the money collected as a surety for investments under a Mudarabah contract.

(436) Is it permissible to restrict the time-period of investment in a Mudarabah contract?

It is permissible for the investor to restrict the time-period of investment in a Mudarabah contract. At the end of the specified time-period, all transactions cease and the profit or loss is divided as per Mudarabah contract

(437) Is it permissible to include a clause in a Mudarabah contract that would require the investor to forfeit all profit earned on his investment in case of early withdrawal?

It is permissible to include such a clause in the Mudarabah contract, and in such a case, the investor will be obliged to forfeit all profit earned on his investment. The amount of profit forfeited will be credited to the Mudarabah Reserve Fund.

(438) Is it permissible to include a clause in the Mudarabah contract that entitles the investor to receive a periodical fixed payment in addition to the profit distribution, regardless of whether the investment profits or loses?

It is not permissible for the investor to demand such a fixed payment in addition to his entitlement to profit. This would entail making the working partner financially liable, which is impermissible.

(439) What should be done in case the Mudarabah is found to be invalid?

If a Mudarabah is found to be invalid, it is cancelled immediately; the partners are then entitled to enter into a new agreement that is valid.

(440) In case of termination of a Mudarabah through the investor buying all the assets of the partnership, is it permissible for that investor to sell such assets under a Murabaha?

In the case described above, the Mudarabah operation has ceased to exist and all assets belonging to the Mudarabah operation are now in the custody of the investor. It is permissible for the investor to dispose of the assets in any manner he deems suitable, including Murabaha. However, care must be taken to comply with all the requirements of a valid Murabaha sale, including disclosure of the exact purchase price of goods from the partnership, as well as any ancillary expenses.

(441) May working partners, engaged in a Mudarabah agreement, act on each other's behalf?

If working partners provide a service, they may act on behalf of one another as agreed upon (e.g. buying, selling, managing, etc.) and no partner may refuse participation in the provision of any agreed upon services.

(442) Is it permissible to include a clause in the Mudarabah contract that entitles the investor to receive a periodical fixed payment in addition to the profit distribution, regardless of whether the investment profits or loses?

It is not permissible for the investor to demand such a fixed payment in addition to his entitlement to profit. This would entail making the working partner financially liable, which is impermissible

(443) In case of long-term Mudarabah contracts, is it permissible to periodically distribute profits among investors instead of a bulk distribution at the conclusion of the Mudarabah contract?

It is permissible, with mutual agreement among investors, to periodically distribute profits instead of a bulk distribution at the conclusion of the contract.

(444) How is profit and loss distribution measured in a Mudarabah?

It is central to the validity of the Mudarabah that distributions be measured as a percentage of profit and loss, not as a fixed amount, percentage of total capital, total revenue or some other absolute amount.

For wholly-owned Mudarababs, profits and losses are netted against one another, whereas for different businesses, as differentiable by the fact that they hold separate Mudarabah agreements, profits and losses are treated separately for separate businesses.

At any point during the agreement's tenure, either the investor or the worker can give notice and leave the Mudarabah. Of whatever remains of the business, non-liquid assets are liquidated and combined to yield a total value for the business. In order, the investor has first rights to his principal amount, the remainder of which is divided between the investor and mudarib(s) according to their respective shares.

(445) If the business incurs only losses, and only a portion of the original principal remains, the a Is it permissible for the investor to demand a guarantee from the working partner against his investment?

It is permissible for the investor to demand a guarantee from the working partner against his investment. mount goes entirely to the investor and the mudarib receives nothing.

(446) Is it permissible for the parties to a Mudarabah contract to convert it into a Musharakah, and subsequently attract more capital through the issue of Shariah-compliant financings?

It is permissible to convert a Mudarabah into a Musharakah and to raise capital through financings. It should be noted, however, that before entering into a contract, all parties should agree on definite objectives of their Mudarabah partnership in order to avoid any future ambiguities.

(447) Is it permissible for the investor to demand from the working partner a certain percentage of each investment to be made, in addition to his share of proceeds of investment?

It is not permissible for the investor to demand such money from the working partner. The role of the working partner is that of a trustee, and a trustee cannot be required to pay any amount to the investor except in case of the trustee's negligence.

(448) Is it permissible for the working partner of funds in a Mudarabah to transfer the funds collected to an agent for investment?

It is permissible for the working partner to appoint an agent for investing the money collected.

(449) To what extent may a mudarib exercise his authority independent of the investor?

Without the investor's consent, even in an unrestricted Mudarabah, the worker may not lend the Mudarabah's money, invest the capital, invite new partners or otherwise do anything contrary to what is reasonably considered to be normal business practice for his chosen industry.

(450) May a working partner, or a number of them, act on behalf of the Mudarabah, without authorization from the rest of the partners?

It is impermissible for working partners to act on behalf of the Mudarabah or to use, buy or sell the property of the Mudarabah without the permission of all the other partners, unless the other partners have specified the manner and extent to which assigned partners may do so.

(451) Is it permissible to deduct salaries from the Mudarabah in two steps: the first deduction being along with other administrative expenses, while the second being the salary of the bank's shareholders out of the net profits?

It is permissible in the Shariah to deduct salaries from the Mudarabah in the mode described. The second deduction represents nothing more than the bank's share in the profits of the Mudarabah operation, in its capacity as working partner, and such profit is to be paid to the bank's shareholders. Care should be taken to ensure that the second deduction is according to the share of the bank as prescribed in the Mudarabah contract.

(452) May working partners, engaged in a Mudarabah agreement, act on each other's behalf?

If working partners provide a service, they may act on behalf of one another as agreed upon (e.g. buying, selling, managing, etc.) and no partner may refuse participation in the provision of any agreed upon services.

(453) Is it permissible for an investor to place restrictions on the working partner of Mudarabah regarding investments?

The investor is entitled to impose restrictions on investments and the working partner will be obliged to comply with such restrictions.

(454) Can different profit ratios be agreed for different working partners in a Mudarabah?

It is permissible to agree different ratios of profit for different working partners in a Mudarabah.

(455) Is it permissible to include a clause in a Mudarabah contract that would require the investor to forfeit all profit earned on his investment in case of early withdrawal?

It is permissible to include such a clause in the Mudarabah contract, and in such a case, the investor will be obliged to forfeit all profit earned on his investment. The amount of profit forfeited will be credited to the Mudarabah Reserve Fund.

(456) In case of termination of a Mudarabah through the investor buying all the assets of the partnership, is it permissible for that investor to sell such assets under a Murabaha?

In the case described above, the Mudarabah operation has ceased to exist and all assets belonging to the Mudarabah operation are now in the custody of the investor. It is permissible

for the investor to dispose of the assets in any manner he deems suitable, including Murabaha. However, care must be taken to comply with all the requirements of a valid Murabaha sale, including disclosure of the exact purchase price of goods from the partnership, as well as any ancillary expenses.

(457) Is it permissible to distribute profits from a Mudarabah contract before expenses have been allocated and netted off from the profits?

It is not permissible to distribute profits before the allocation and net-off of expenses. The amount that remains subsequently will be termed net profit and will be distributed among the investors.

(458) What should be done in case the Mudarabah is found to be invalid?

If a Mudarabah is found to be invalid, it is cancelled immediately; the partners are then entitled to enter into a new agreement that is valid.

(459) Is it permissible for the working partner in a Mudarabah contract to bring in another working partner?

It is permissible for the working partner in a Mudarabah contract to appoint another working partner with the approval of the investors. However, the investors will not be liable to pay the second working partner. The proportion of yield payable to the working partner will remain same and will be shared by the two working partners.

(460) Is it permissible to alter the Mudarabah contract in order to change the profit percentages or any other clause?

It is permissible to alter the Mudarabah contract if all the parties agree to the change. The alteration may pertain to profit percentages or any other clause.

(461) In case a client approaches a bank to finance a particular project, is it permissible for the bank to charge a fee for evaluating the profitability of the project prior to entering into a financing arrangement?

It is permissible for the bank to charge a fee for evaluation of the project, provided that such fee is charged before entering into a financing arrangement.

(462) Is it permissible to deduct salaries from the Mudarabah in two steps: the first deduction being along with other administrative expenses, while the second being the salary of the bank's shareholders out of the net profits?

It is permissible in the Shariah to deduct salaries from the Mudarabah in the mode described. The second deduction represents nothing more than the bank's share in the profits of the Mudarabah operation, in its capacity as working partner, and such profit is to be paid to the bank's shareholders. Care should be taken to ensure that the second deduction is according to the share of the bank as prescribed in the Mudarabah contract.

(463) Is it permissible for the investors to promise additional profits to the working partner as a form of motivation?

It is permissible for the investors to reach such an agreement with the working partner, provided that the division of profits is according to the Mudarabah contract.

(464) May a mudarib earn a salary in addition to his share of profit?

There is no salary for the worker in a Mudarabah; he takes only that share of the profits to which he is entitled.

(465) Is it permissible for an investor to withdraw his contribution in a Mudarabah before the due date of distribution of profits? What right does he have to profits earned up to that date?

It is permissible for an investor to withdraw his contribution before the due date of distribution of profits. The investor will be entitled to the profit earned on his investment up to the date of his withdrawal.

(466) Is it permissible for the working partner in a Mudarabah contract to bring in another working partner?

It is permissible for the working partner in a Mudarabah contract to appoint another working partner with the approval of the investors. However, the investors will not be liable to pay the

second working partner. The proportion of yield payable to the working partner will remain same and will be shared by the two working partners.

(467) Is it permissible to pool the profits of working partners?

It is forbidden to pool the profits of working partners, though it is acceptable for individual working partners to share their profits after distribution.

MURABAHA QUESTIONS

(468) What factors should the seller consider in determining the price of a Murabaha contract?

The Murabaha price is mutually agreed upon between the parties to the contract. The seller should honestly state the cost incurred in purchasing and acquiring the goods and should propose a fair profit margin that the buyer agrees to.

(469) Is it permissible to add storage charges to the cost of goods being sold under a Murabaha?

It is permissible to add storage charges incurred to the cost of goods.

(470) Is it permissible to sell endowments (Waqf) under Murabaha?

It is not permissible to sell endowments in the Shariah since they are not owned by any specific person, and for a sale to be valid a seller must be unambiguously identified.

(471) Is it permissible for a bank to purchase goods requested by a Murabaha client without first executing the Murabaha contract?

It is necessary for the bank to first contract with its client to ensure the client's commitment to purchase the goods.

(472) In a Murabaha transaction, is the seller obliged to sell the asset to a client who, after promising to purchase, becomes insolvent?

In case the seller comes to know of a client's insolvency before delivery of the asset he has the right to withhold delivery.

(473) Is it permissible to sell goods under Murabaha that were bought before entering into any Murabaha contract with the seller?

It is not permissible to sell goods under Murabaha that were bought before entering into any Murabaha contract with the seller. Murabaha is a special kind of sale in which the seller is bound to buy and sell the client only those goods that were specifically requested by the client.

(474) Is it permissible for a bank's client to authorize the bank or an employee of the bank as an agent to conclude a Murabaha transaction?

It is permissible for a bank's client to grant agency to the bank or any of its employees to conclude a Murabaha transaction between the bank and such client.

(475) At what stage does the liability of the bank as regards goods to be sold under a Murabaha contract end?

The liability of the bank as regards goods to be sold under a Murabaha contract ends once the goods are delivered to the client. In case of imported goods, the bank's liability ends once the goods arrive at the port and the client receives the shipping documents.

(476) In case goods imported by a bank under a Murabaha agreement are delivered before the shipping documents, is it permissible for the bank to deliver the goods to its client?

It is permissible for the bank to deliver the imported goods bought under a Murabaha agreement to the client in case they arrive before the shipping documents. In such a case, the bank is required to issue a customs clearance certificate to the client. In order for the issue of such a certificate to be valid, the following conditions should be met:

- The documentary credit should be in the name of the bank.
- The invoice should be in the name of the bank.
- The documentary credit should require the beneficiary to notify the bank of the details of the shipment and invoice.
- In case the client requests the issuance of customs clearance certificates while the bank has not received notification from the beneficiary, the bank will endeavor to obtain such notification. The customs clearance certificate should not be issued before the receipt of such notification, except to avoid imminent harm.

Furthermore, it is permissible in such a case to change the mode of sale from Murabaha to a bargaining sale. Since documents have not arrived and cost is not decisively known, both parties may bargain to a suitable price.

(477) Is it permissible to make the profit rate in a Murabaha contract contingent upon the period of repayment?

It is permissible to make profit contingent upon the repayment period. However, the amount of profit should be decided at the time of contracting. In other words, this entails that, at the time of contracting, the client be given an option of different repayment periods, each with different profit rates from which the client may select one.

(478) Is it permissible for a lessor to buy goods from a lessee under a Murabaha, with a bank as an intermediary?

Such a transaction is permissible in principle. However, it should be verified that the lessee is the actual owner of the goods being sold and that the actual transfer of goods takes place. Due to the sensitivity of such a transaction, it is strongly recommended that a Shariah opinion be sought on the actual contract in question.

(479) What is the preferred mode of delivery of goods bought under Murabaha to the client?

It is preferable for the bank to have its own storage space where the goods are stored up until they are delivered to the client. However, in the absence of such a facility, it is permissible for the bank to request the client to collect the goods from where the bank purchased them under an agency agreement.

(480) Is it permissible for a bank to contract a Murabaha in order to sell the client goods that are owned by the client himself?

A Murabaha is a sale in which the seller sells goods owned by him at a known cost plus profit. The transaction described in the question is not a valid Murabaha transaction. Furthermore, the said transaction is not valid in Shariah under any mode of financing, since it involves buying and selling for oneself, which is forbidden. It is among the essentials of a valid contract that there be two distinct and separate persons who transact in terms of offer and acceptance.

(481) What factors should the seller consider in determining the price of a Murabaha contract?

The Murabaha price is mutually agreed upon between the parties to the contract. The seller should honestly state the cost incurred in purchasing and acquiring the goods and should propose a fair profit margin that the buyer agrees to.

(482) Is it permissible for a bank to purchase goods requested by a Murabaha client without first executing the Murabaha contract?

It is necessary for the bank to first contract with its client to ensure the client's commitment to purchase the goods.

(483) In the event that the value of the damage to some Murabaha goods is insignificant, is it necessary for the bank to deduct the amount of damage from the price or is it sufficient to pay the purchase pledger the amount of recompense received from the Takaful company?

If credit is extended for a Murabaha deal, then it is necessary to deduct the amount of damage however insignificant, from the price in addition to paying the purchase pledger the amount of recompense received from the insurance company.

This is because a Murabaha is a sale of trust and the client must be informed of any change in price.

(484) Is it permissible to share in the business profits of a client who has been sold goods under a Murabaha which are essential in running that particular business?

It is impermissible to receive any share of the profits of a Murabaha client and it is not permissible to add any such clause in a Murabaha contract.

(485) Is it permissible to sell air tickets under a Murabaha contract?

It is permissible to sell air tickets under a Murabaha contract. It is best, however, to seek a Shariah opinion on the specific contract before its execution.

(486) Is it permissible for a bank's client to authorize the bank or an employee of the bank as an agent to conclude a Murabaha transaction?

It is permissible for a bank's client to grant agency to the bank or any of its employees to conclude a Murabaha transaction between the bank and such client.

(487) Is it permissible to stipulate that Murabaha installments be payable in foreign currency at the rate prevailing on the due date, in consideration of the fact that the bank has to pay for such goods in installments in foreign currency?

It is a condition for the validity of a contract that the contract price be known to both parties. In such a case, both the seller and buyer do not know the contract price, as it is contingent upon the currency rate prevailing in the future. Due to this and other ambiguities, such an arrangement is not permissible in the Shariah and should be avoided. Permissible alternatives to such a transaction would be:

- Executing and concluding Murabaha transactions in foreign currency. Foreign currency would be converted to the local currency on the date of purchase of goods from the exporter.
- To convert a Murabaha sale into a simple bargaining sale, where the bank estimates a price and enters into a contract with the customer based on this price. Later, this price can be changed with mutual consent of both contracting parties.

(488) A bank purchases an asset which is required to be registered with the government. Before such registration is completed, a client approaches the bank to buy such an asset under Murabaha. May the bank sell the asset even though it is not registered?

It is permissible to sell the asset in such a circumstance. The buyer may get the asset registered directly in his own name. However, it is imperative that the title of such an asset be in the name of the bank.

(489) A client approaches a bank and requests it to finance under a Murabaha contract goods bought by the client itself. The bank should pay the price of goods according to the invoice submitted by the client and charge the same to the client along with a profit margin. Is such a transaction permissible?

The described transaction is not a valid Murabaha transaction and, furthermore, is unlawful in the Shariah. A Murabaha entails selling a particular commodity that the seller owns, disclosing its cost and adding a profit margin mutually agreed upon by both parties. A Murabaha is not valid for goods that have neither been bought nor received by the seller nor are in his possession.

(490) In case some defect is discovered in goods to be sold under a Murabaha subsequent to signing the Murabaha contract, who is liable to make good the loss?

Any defect discovered in the goods is the liability of the seller. It is of no consequence if such defect is discovered subsequent to signing the Murabaha contract.

(491) Is it permissible to benchmark Murabaha installments on the market price of the goods prevailing at the due date of each installment?

It is not permissible to benchmark Murabaha installments on the current market price of goods. A Murabaha is a sale of goods in which the cost and profit is unambiguously decided at the time of contract.

(492) Is it permissible to impose a penalty on the promising buyer if he defaults in purchasing the goods he ordered?

Such a penalty is not permissible as it falls within the definition of riba. Instead, the bank may choose to sell the goods to another buyer, and recover from the promising buyer any expenses and depreciation in value of goods caused by his default.

(493) Is it permissible for a bank's client to authorize the bank or an employee of the bank as an agent to conclude a Murabaha transaction?

It is permissible for a bank's client to grant agency to the bank or any of its employees to conclude a Murabaha transaction between the bank and such client.

(494) A client approaches a bank to purchase goods under Murabaha. However, the client has a previous contract of purchase with the owner of the goods. May such a contract be unilaterally terminated by the client in order to proceed with the Murabaha contract?

Dealing with a client who has a previous contract with the owner of the goods depends on the nature of such a previous contract. If the contract is a general agreement and does not cover a specific transaction, then a Murabaha may be entered into. If, however, the contract is for a specific transaction, then this contract should be terminated before entering into a Murabaha transaction. As proof of termination, the client should provide the bank written evidence indicating that the client and owner of the goods have terminated their previous contract.

(495) What is the responsibility of the bank as regards purchase of goods under Murabaha?

The bank is bound to acquire the goods exactly as requested by the buyer. Due care and precaution should be exercised in buying the goods. The bank should obtain multiple quotations in order to obtain the best possible offer.

(496) Is it permissible to undertake a Murabaha transaction if the seller is not fully aware of the specifications of goods to be acquired and sold?

Goods should be thoroughly and unambiguously described in the contract of Murabaha. This should make the seller fully aware of what is to be sold. In case of any discrepancy in the goods, the buyer under Murabaha has the option to reject the goods and recover any amount paid.

(497) Is it permissible for a bank acquiring goods as a seller in a Murabaha to obtain insurance cover on such goods?

It is permissible to obtain insurance cover on goods to be sold under Murabaha, though it is not necessary in the Shariah. However, if the applicable laws and regulations make it mandatory to insure the goods, the bank should comply accordingly. It should be noted that irrespective of

whether insurance cover has been obtained or not, the bank (seller) is responsible for any damage to the goods prior to delivery to the buyer.

(498) What is the correct mode of executing a Murabaha contract for purchase of foreign goods?

A Murabaha contract for purchase of foreign goods would include the following parties:

- The Islamic Bank (“Bank”)
- Bank’s client (“Buyer”)
- Foreign exporter (“Exporter”)

The Murabaha transaction would include the following steps:

- 1) The buyer requests a Bank to purchase goods from a foreign exporter
- 2) The bank opens a documentary credit under its own name.
- 3) The exporter ships the goods to the bank and simultaneously dispatches shipping documents to the bank.
- 4) The bank, upon receipt of shipping documents, sends them to the buyer against an interim promissory note.
- 5) The buyer inspects the goods on arrival, and communicates his satisfaction to the bank.
- 6) The bank pays the exporter.
- 7) The bank and the buyer execute a sale contract. The buyer signs a promissory note which states the buyer’s promise to pay the bank the cost of the goods plus a specified markup. In case of payment in installments, multiple promissory notes may be drawn.
- 8) The buyer pays the bank on the due date of promissory note.

(499) Is it permissible to add to the cost of the Murabaha commissions levied by one department of a bank on another department of the same bank?

It is not permissible to add inter-departmental bank commissions to the cost of goods in a Murabaha contract. Such a commission is not considered to be an additional direct expense.

(500) In the event of damage to goods under a Murabaha contract, is it necessary to decrease the price of the contract by the amount of insurance compensation received? Will it suffice to hand over the compensation amount to the client without decreasing the price?

It is obligatory to decrease the price of a Murabaha contract by the amount of any insurance compensation received in lieu of damage to the goods. Changes in price that take place subsequent to the Murabaha contract should be immediately notified to the client. It is not sufficient to hand over the compensation amount to the client without decreasing the price.

(501) Is it a condition in a Murabaha contract that the asset be known and identified?

It is a condition in a Murabaha contract that the asset be known and identified and that its original price and all costs incurred by the original buyer to obtain the asset also be declared.

(502) A client approaches a bank and requests it to finance under a Murabaha contract goods bought by the client itself. The bank should pay the price of goods according to the invoice submitted by the client and charge the same to the client along with a profit margin. Is such a transaction permissible?

The described transaction is not a valid Murabaha transaction and, furthermore, is unlawful in the Shariah. A Murabaha entails selling a particular commodity that the seller owns, disclosing its cost and adding a profit margin mutually agreed upon by both parties. A Murabaha is not valid for goods that have neither been bought nor received by the seller nor are in his possession.

(503) Is it permissible to execute a Murabaha transaction in a foreign currency? Furthermore, is it permissible for the invoices of the purchase of goods by the seller to be in a foreign currency?

It is permissible to execute a Murabaha transaction in a foreign currency. It should be converted to the local currency on the date of purchase of goods from the exporter. It is also permissible that the purchase invoices are in a foreign currency.

(504) What expenses may be added to the cost of goods purchased by the seller in pursuance of a Murabaha contract? Can staff salaries be added to the cost?

The cost of goods sold in a Murabaha contract should only be increased by expenses that directly relate to those goods and contribute to the value of the goods. Staff salaries and other general and administrative expenses may not be added to the cost of goods.

(505) Is it permissible to finance labor cost under Murabaha?

It is impermissible to finance the cost of labor under a Murabaha. For such a financing, other permissible methods such as a Musharakah or a Mudarabah may be used.

(506) Is it permissible to appoint a guarantor in a Murabaha sale?

It is permissible to appoint a guarantor in a Murabaha sale on credit. The guarantor should be provided a letter which stipulates that guarantees should not be evoked except upon default of the party. The bank should always exercise prudence and caution in evoking a guarantee and should consider it a last resort.

(507) Is it permissible to add storage charges to the cost of goods being sold under a Murabaha?

It is permissible to add storage charges incurred to the cost of goods.

MUSAWAMA

(508) What is a Musawama?

A Musawama is an ordinary transaction of sale in which neither the cost of acquiring the asset nor the profit to be earned from it are disclosed to the client. The asset is sold based on the payment of a lump sum price.

(509) A client approaches a bank and requests it to finance under a Murabaha contract goods bought by the client itself. The bank should pay the price of goods according to the invoice submitted by the client and charge the same to the client along with a profit margin. Is such a transaction permissible?

The described transaction is not a valid Murabaha transaction and, furthermore, is unlawful in the Shariah. A Murabaha entails selling a particular commodity that the seller owns, disclosing its cost and adding a profit margin mutually agreed upon by both parties. A Murabaha is not valid for goods that have neither been bought nor received by the seller nor are in his possession.

(510) Is it permissible to execute a Murabaha transaction in a foreign currency? Furthermore, is it permissible for the invoices of the purchase of goods by the seller to be in a foreign currency?

It is permissible to execute a Murabaha transaction in a foreign currency. It should be converted to the local currency on the date of purchase of goods from the exporter. It is also permissible that the purchase invoices are in a foreign currency.

(511) What expenses may be added to the cost of goods purchased by the seller in pursuance of a Murabaha contract? Can staff salaries be added to the cost?

The cost of goods sold in a Murabaha contract should only be increased by expenses that directly relate to those goods and contribute to the value of the goods. Staff salaries and other general and administrative expenses may not be added to the cost of goods.

SALAM

(512) Is it permissible for the buyer of goods in a salam contract to sell the goods before their delivery?

It is not permitted for the buyer of goods under a Salam contract to sell goods before their delivery, as it is not permissible to sell what one does not constructively possess.

(513) How does Salam financing work?

A Salam transaction is a means by which party A advances money, in full and on spot, to party B, and party B promises to deliver an item on a specified date in the future. The Prophet (Allah

bless him and give him peace) said: “Whoever wishes to enter into a contract of Salam, he must effect the Salam according to the specified measure and the specified weight and the specified date of delivery.”

A Salam is the exception to the Islamic rule forbidding forward sales and stipulating that party B possess the item to be sold in the present. The Salam agreement has the dual benefit of providing liquidity to party B, who normally would not realize any income until he invests large sums of capital in advance over extended periods of time, like farmers preparing seasonal crops; and benefiting party A because the Salams are priced lower than spot sales because the money is paid in advance.

When entering into a Salam, there should be certainty about the item’s quantity, quality, deliverability and availability at the time of delivery, including agreement on the date and location of delivery; quantitative descriptions should be specified in a manner proper to the item, whether by weight, volume, size or count (ie. it would be impermissible to sell in volume something customarily sold in weight); in the Hanafi school it is a condition of a valid Salam agreement that the item be readily available in the market at the time of contracting and expected to be readily available at the time of delivery; in the Shafi’i, Maliki and Hanbali schools it is sufficient that the item be readily available in the market at the time of delivery only.

(514) Is it permissible to consider a previous loan as the sale price for the Salam sale?

In case a loan has been advanced from one party to another, it is permissible for the Salam purchaser to agree with the Salam seller that the received loan amount be considered as Salam price.

(515) May one create a Salam agreement for items that are only meant to be sold on spot?

It is impermissible to create a Salam agreement for items that are only permissible to sell on spot, such as silver for gold.

(516) What recourse is available to the buyer in a Salam sale in case of default in delivery of contracted goods?

In such a case, the buyer has the right to rescind the contract and receive the contract price from the seller without there being any increase or decrease in the contract price. The buyer also has the option to carry on with the contract for future delivery of goods.

(517) May the seller buy back the Salam commodity from the buyer?

The seller may not buy back the commodity from the buyer. This effectively creates riba, in which one amount of money is exchanged for a higher amount of money at a later date.

(518) Is the buyer permitted to ask the borrower to provide security in a Salam contract?

The buyer in a Salam contract may ask the seller to provide security.

(519) Does the seller have any recourse in case the price of items contracted for in a Salam sale increase between the time of the contract and the date of delivery?

The seller is bound to deliver the goods without demanding any excess money, since the contracted item becomes the property of the purchaser once the contract is signed.

ZAKAT

(520) Is zakat due on means of production such as machinery?

Zakat is not due on an investment's means of production (e.g. property, plant and equipment).

(521) When does property become zakatable?

Zakat is due on zakatable property possessed for at least one lunar year; zakat calculations must obligatorily be based on the lunar year because payment intervals on the solar calendar are longer.

(522) Is it valid for the zakat distributor to pay received zakat to his eligible family members and friends?

Unless instructed otherwise, the zakat distributor may give the zakat payment to those of his friends and relatives that are eligible to receive zakat.

(523) What is the liability of the zakat distributor in case of his inability to disburse the full amount of zakat?

When an individual or institution assigned with the task of distributing zakat is unable to distribute the entire zakat amount, the remaining zakat should be returned to the zakat payer or, with the permission of the zakat payer, be given in charity to a recipient according to the payer's instructions; if contacting the original zakat payer is not possible, the money should be given as zakat to a similar cause.

(524) Is zakat due on household items and personal effects?

Zakat is not due on the typical requirements necessary for living, including such items as food, clothing, housing, means of conveyance, tools for trade, the books and utensils of a student or teacher, and household and personal effects, regardless of their cost.

(525) What is the optimal timing of zakat payment?

One must pay zakat as soon as it becomes due (or, optionally, before) assuming the conditions exist, namely that at least one of the eight categories of deserving recipients exists, and that one does not await a more deserving recipient than the one currently available, in which case some delay becomes permissible.

(526) Is zakat due on hobby items?

Zakat is not due on hobby items, like collectibles, pets, and toys, until they are employed for trade.

(527) Is it permissible to give or take stolen property as zakat?

It is impermissible to give or take stolen property as zakat one is certain is stolen; if there is doubt then it is permissible to give or take the zakat, though it is always superior to avoid the doubtful.

(528) Is the zakat payer responsible to check the legitimacy of the zakat collector?

The zakat payer is responsible for verifying the legitimacy of the collecting intermediary before payment, though additional checking is not necessary after payment.

(529) When does unpaid zakat become payable?

Unpaid zakat is payable immediately.

(530) Is zakat due on revenue-generating livestock?

Zakat is not due on farm animals that constitute the means of production itself (e.g. there is no zakat on egg-laying chickens and dairy cows), but there is zakat on their product (e.g. egg and milk inventories).

(531) Who is obliged to pay zakat?

Zakat is obligatorily due on every sane, adult Muslim male and female. Zakat is due on those possessing the minimum nisab and are free of debt obligations; financial obligations (where the net worth of the individual is below the nisab amount because he owes more than he is worth) exempt one from paying zakat only if the individual exhausts all reasonable means to repay these debts using other forms of surplus wealth (i.e. wealth that exceeds what is normal considered a requirement for living).

(532) Are individuals exceeding the nisab entitled to zakat under any circumstance?

Individuals exceeding the nisab may not receive zakat unless they are: 1) zakat collectors; 2) of those whose hearts are to be won over; 3) a slave seeking ransom (where the price of freedom exceeds the nisab); 4) indebted (where the debt exceeds their surplus wealth) 5) fighting for the cause of Allah; or 6) a traveler in need.

(533) What is the appropriate time to pay zakat al-fitr?

It is permissible to pay zakat al-fitr anytime during Ramadan and the 'Eid day, though impermissible after the 'Eid day sunset, though no less obligatory.

(534) May I pay zakat in advance of my wealth being equal to or greater than the nisab?

Zakat may be paid in advance of one's zakat valuation date, but not in advance of one's nisab qualification.

(535) When do I measure my nisab for zakat al-fitr payment?

Unlike the nisab minimum for ordinary zakat, which must be possessed for an entire year, the nisab minimum for zakat al-fitr is measured at dawn on 'Eid day, the first of Shawwal (the day after the final day of Ramadan).

(536) When does zakat al-fitr become obligatory on me?

Zakat al-fitr becomes obligatory from the sunset of the final day of Ramadan to the dawn of the following day, meaning 'Eid day, when it is recommended to be paid before prayer.

(537) What is my liability if I unknowingly pay zakat to an undeserving recipient?

Zakat unknowingly paid to an undeserving recipient (e.g. the recipient actually exceeds the nisab requirement) is deemed to have fulfilled the obligation of zakat if the payer realizes the mistake afterwards, though the onus of returning the zakat rests with the recipient.

(538) Who is responsible for the zakat of one unable to pay in person?

A guardian or trustee must pay zakat from the wealth of a qualifying individual who is unable to pay in person, such as a traveler, prisoner or incapacitated person.

(539) Is advance payment of zakat valid?

Two conditions must be satisfied for the advance payment of zakat to be valid.

At the end of the zakat year during which payment was made in advance:

- 1) the zakat recipient must still qualify for zakat, namely that he or she is living and still a valid recipient, after having deducted the amount by which he or she is enriched by the original advance zakat payment; and
- 2) the zakat payer must still qualify for zakat payment, namely that he or she is living and still a valid payer. If the advance payment is found to have been invalid at the end of the year based on these two conditions, the money is returned by the recipient at the rate at which it was received.

(540) Who is responsible for the zakat of one unable to pay in person?

A guardian or trustee must pay zakat from the wealth of a qualifying individual who is unable to pay in person, such as a traveler, prisoner or incapacitated person.

(541) Is zakat due on means of production such as machinery?

Zakat is not due on an investment's means of production (e.g. property, plant and equipment).

(542) Is zakat due on zakatable property that is stolen, lost or destroyed?

Zakat is not due on zakatable property that is accidentally stolen, lost or destroyed before its zakat is distributed; though zakat is due on property destroyed intentionally, which amounts to misappropriation because zakat is a debt obligation to the deserving recipient.

(543) Is zakat due on property that is subject to ushr?

Zakat is not due on property that is already charged ushr (payment on farm produce).

(544) What is the rate of zakat al-fitr payment?

Zakat al-fitr payment equals 2.03 liters of the locality's staple food (i.e. equal to or superior to the local staple's quality), though it is also permissible to give its monetary equivalent in cash or in another staple.

(545) Is zakat due on lost and found items?

Zakat is not due on lost property for either the one who loses or the one who finds and, if found, zakat payments are only made upon the resumption of possession and not made for the time the property was lost. Though in the Shafi'i school zakat is paid on qualifying property that is absent from the zakat payer (e.g. lost, lent or stolen money) for the period of time that it is absent, on the condition that this property is eventually recovered and that it still exceeds the nisab amount upon recovery.

(546) May I pay zakat to my dependant family members?

Members of one's dependant family and relatives (or one's spouse's dependant family and relatives) may not receive zakat, since these individuals are already obliged to receive one's support (assuming the necessary conditions exist), including one's spouse, parent, grandparent,

great grandparent, and their direct ascendants; and child, grandchild, great grandchild and their direct descendants.

(547) May I pay zakat to charitable institutions such as hospitals?

Institutions such as hospitals, orphanages and charitable schools that serve needy zakat recipients may receive zakat, for which the entire zakat amount must be appropriated directly to the poor; it would be impermissible for any of the zakat funds to be used for wages and administrative expenses.

(548) May I distribute zakat al-fitr among more than one eligible person?

It is permissible to give all of one's zakat al-fitr to one person or to distribute it among many.

(549) Is it permissible for a zakat collector to authorize another party to distribute zakat?

The authorized distributor is entitled to authorize another party to distribute the zakat; it is permissible, though not a necessary requirement, to disclose the identity of the original zakat payer, unless the zakat payer instructs otherwise.

(550) Is it valid for the zakat distributor to pay received zakat to his eligible family members and friends?

Unless instructed otherwise, the zakat distributor may give the zakat payment to those of his friends and relatives that are eligible to receive zakat.

(551) Is zakat due on disbursed loans?

Zakat is due on loans that have been disbursed where there is a reasonable expectation of receiving repayment.

(552) Is inadvertent zakat payment to a non-Muslim considered zakat paid?

Incorrect payment to a non-Muslim is not considered zakat paid.

(553) Is it valid to intend paying zakat while ostensibly making a loan?

It is permissible for a zakat payer to intend to pay zakat while ostensibly making a loan, and thereby fulfill his zakat obligation, provided the recipient is eligible to receive zakat and that if the recipient returns to repay the money, the zakat payer must refuse to accept the repayment by waiving the ostensive loan obligation.

(554) May I pay zakat to a woman who has been denied the marriage payment by her husband?

Zakat may be given to the woman whose husband is unable (or unwilling) to pay the marriage payment.

(555) What is zakat?

“And perform the prayer, and pay the alms; whatever good you shall forward to your souls’ account, you shall find it with God; assuredly God sees the things you do.”(2:110) Zakat is an Islamic tax paid by qualifying Muslims to deserving recipients, and a means to purify one’s wealth. It is not charity. Rather, it is a portion of one’s property that needy Muslim members of society already own by virtue of it having been in one’s possession for one lunar year. Zakat therefore, is distributed, not donated. Unlike charity (sadaqah), which is recommended to give, zakat is obligatory, whose non-payment or late payment is an enormity.

(556) Am I allowed to set off my losses against my zakat payment?

Regardless of one’s losses (e.g. in stock market investing, real estate speculation, business ventures, etc.), one is obligated to pay zakat on the entire net amount (i.e. zakatable property less current liabilities); losses may not be calculated against the zakat itself (e.g. if one’s zakatable property comes to \$100,000, and one thereby owes \$2,500 in zakat, it would be impermissible to take, for instance, a \$500 loss in the stock market and reduce one’s zakat to \$2,000).

(557) Is it valid to sell property just before the end of the lunar year to avoid paying zakat on it?

Sale of property intended to avoid zakat payment is considered unlawful, though if the timing of the sale happens to coincide with the payment of zakat it is lawful.

(558) Is zakat due on tradable goods?

Zakat is due on tradable goods one lunar year from the date the total inventory exceeds the nisab minimum, even if individual items within this inventory are replaced by buying, selling or exchanging (assuming that the total inventory never falls below the nisab minimum, because if it does, a new valuation date is set for when the nisab minimum is exceeded).

(559) Is zakat due on zakatable property that is stolen, lost or destroyed?

Zakat is not due on zakatable property that is accidentally stolen, lost or destroyed before its zakat is distributed; though zakat is due on property destroyed intentionally, which amounts to misappropriation because zakat is a debt obligation to the deserving recipient.

(560) Is zakat al-fitr due on one who did not fast during the month of Ramadan?

Zakat al-Fitr is obligatory whether one fasted during Ramadan or not.

(561) Is zakat due on investment income?

Zakat is due on the returns that one receives from an investment.

(562) Is it valid to use zakat money to pay for operating costs of the zakat-collecting institution, such as salaries?

Zakat may not be used to pay for operating costs (e.g. salaries, utilities, administration, etc.) even if the institution taking zakat directly benefits zakat eligible individuals; a condition of valid zakat distribution is that the zakat is given in its entirety directly to the eligible recipient, so that the recipient actually owns the zakat; it is permissible to give zakat to recipients and to charge them a fee for a service, from which an operating cost may be paid (e.g. a hospital gives zakat to a needy patient; the patient gives the money to the hospital for treatment; the hospital allocates a portion of the money for the doctor's salary).

(563) Is it permissible for zakat collectors to deduct wages and other expenses from zakat itself?

In modern times, when no Islamic state exists, it is impermissible for zakat collectors to deduct wages and administrative expenses from the zakat itself for the service of distributing zakat among recipients;

it is a condition for the validity of a zakat collector to deduct wages that the zakat recipient appoint the zakat collector to act as an agent on behalf of the recipient; in an Islamic state, the head of the state is obligated to act on behalf of zakat recipients by appointing zakat collecting agents, so zakat collectors are effectively appointed by the recipients in an Islamic state; but in a modern state, zakat collectors act on behalf of zakat givers, not zakat recipients, so it would be impermissible for a zakat collector to deduct wages and administrative expenses from the zakat.

It is permissible, however, for zakat collectors to take charity, not zakat, to cover wages and administrative expenses related to zakat collection.

(564) Is zakat obligatory upon non-Muslims?

Non-Muslims and apostates to Islam do not pay zakat, even in Muslim lands, nor do they pay zakat for the time spent out of Islam if they later decide to become Muslim.

SALE

(565) What are the rules regarding payment – whether in cash or in kind – in case of spot and deferred transactions?

The amount and timing of payment must be agreed upon before delivery, whether the transaction is on spot or deferred:

- **Cash for Goods:** If the sale is a spot transaction and involves the payment of cash (or a like monetary instrument) for the delivery of goods, the seller is entitled to receive payment before delivery, though he may choose to waive this right;
- **Goods for Goods:** If the sale is a spot transaction in which only goods are exchanged, the two parties must make the exchange at the same time;
- **Deferred Payment:** Payment is deferrable when the seller agrees, as long as the payment date is known beforehand.

(566) What are the obligations of the seller as regards disclosure of the item being sold?

The seller is obligated to disclose, as accurately as possible, the item's relevant qualities, defects and irregularities; any willful misrepresentation, whether directly, by stating so explicitly, or indirectly, by allusion, regarding the price of the item or the item itself, constitutes fraud.

(567) Is it permissible for the seller to charge a higher price in case of deferred payment?

It is permissible to charge a higher price for goods paid on deferral than for goods paid on spot in cash, as long as the buyer is aware before the sale's execution.

(568) What are the conditions of sale of goods and services?

Conditions of sale of goods and services: 1) a valid buyer and seller; 2) an offer and acceptance; 3) unconditionality; 4) immediacy; 5) the disclosure of all details pertaining to the sale's execution; and 6) an option to cancel.

(569) May I sell defective goods by intentionally withholding information about their defect?

It is impermissible to sell goods that are defective, where the seller intentionally withholds information about a defect; though if the defect was not known by either buyer or seller at the time of the sale, the sale may still be cancelled within the specified period of cancellation; qualitative or quantitative misrepresentation of any aspect of a good or service is impermissible and constitutes fraud, grounds for the aggrieved party to rescind the agreement at any time. The buyer, nevertheless, still has the choice of whether or not to accept the defective good.

(570) Is it permissible for a debtor to delay payment unnecessarily?

It is impermissible for a debtor possessing the means to pay the creditor to delay payment unnecessarily beyond the agreed upon date.

(571) Is the buyer entitled to return an item if the seller claims the sale is at cost but subsequently makes a profit?

If the buyer is told by the seller that an item is being sold at "cost" (where cost may include any value additions to the item made by the seller), and the buyer learns after the sale that the seller had actually made a profit, the buyer is entitled to return the item, but not entitled to compel the seller to sell the item at a lower price, though the seller may opt to do so.

(572) May I sell goods and services that support the enemies of Islam?

It is impermissible to sell goods and services that support (e.g. with weaponry) the enemies of Islam.

(573) May I sell goods that are not in my ownership?

It is impermissible to sell goods that are not owned by the seller, or when the seller is not the owner, the seller lacks authorization; permissible ownership includes constructive ownership, where the seller might not physically possess the good, but is liable for the risk associated with it (e.g. permissible stocks traded on the Internet).

(574) What is the liability of both parties in case the item being transacted is damaged during the execution of the sale?

If during a sale's execution, the item is damaged, destroyed, wrongfully consumed, or in any way reduced in value from the time the sale was agreed upon, then responsibility (and the payment of the item's price) is as follows:

- Before the buyer takes possession, it is the seller's responsibility, unless the buyer causes the damage, in which case the buyer is responsible;
- Before the buyer takes possession, if a third party (known or unknown) causes the damage, the buyer chooses whether to cancel the deal, thereby holding the third party responsible to the seller, or maintain the deal, thereby holding the third party responsible to himself;
- Before the buyer takes delivery, if the cause of damage is not attributable to any party, whether buyer, seller or third party, the seller is responsible (e.g. water damage from rain);
- Once the buyer takes possession, it is the buyer's responsibility.

(575) Is it permissible for a debtor to delay payment unnecessarily?

It is impermissible for a debtor possessing the means to pay the creditor to delay payment unnecessarily beyond the agreed upon date.

(576) If the buyer decides to keep a low quality, or a defective, item as it is, would he be entitled to a compensatory discount?

If the buyer decides to keep the item as it is, the buyer is not thereby entitled to a compensatory discount, though it is still permissible for the seller to offer a discount.

(577) May the customary method of ledger entries used by banks in regard to debits and credits be considered mutual receipt in the exchange of commodities?

It is not lawful for a seller to conduct a sale for a commodity that is not in his constructive possession; the only exception being the Salam sale.

(578) May I trade in an item that is not in existence on the date of transaction?

It is impermissible to trade in the non-existent (e.g. unharvested crops or an unborn calf); though, it is worth making a distinction between something not yet naturally existent from something not yet manufactured (e.g. undeveloped property), where a purchase is legitimate because one does not speculate on the outcome of an event but rather invests in the production of a good; the exception occurs when the non-existent is purchased as a consequence of purchasing something that may instrumentally cause the existence of something non-existent (e.g. purchasing a cow that expects to give birth to a calf), which is permissible, as long as they are not sold separately.

(579) What is the difference between ownership and possession?

The difference may be explained as such: something that is possessed might not be owned (e.g. rental property), while something that is owned might not be physically possessed (e.g. one's stolen vehicle).

Further, ownership can be both physical and what is often termed "constructive" ownership.

Constructive ownership means that the consequences of physical ownership risks return to the owner and that the owner be able to sell the item (ie. one would not be permitted to sell a shipped good while it is at sea). A common example of constructive ownership without physical possession is a stock purchased over the Internet

(580) What are the integrals of a contract?

A contract includes at least two legitimate parties; a buyer offering and a seller accepting, or a seller offering and a buyer accepting; an agreement that neither conditions nor is conditioned by another agreement; and an immediate execution.

(581) What are the conditions of sale of goods and services?

Conditions of sale of goods and services: 1) a valid buyer and seller; 2) an offer and acceptance; 3) unconditionality; 4) immediacy; 5) the disclosure of all details pertaining to the sale's execution; and 6) an option to cancel.

(582) What are the different types of offer in Shariah?

Whether an offer from the buyer to the seller or from the seller to the buyer, an offer is of three types: 1) Written offer: Contracts involving any level of detail and complexity require a written offer; 2) Spoken offer: Suffices for transactions involving a straightforward purchase, such as buying food from a vendor at a market; 3) Unspoken offer: The three most common types of unspoken offer are the indicated offer, by hand signal (or other form of signaling) between two parties familiar with the transaction, such as in a stock exchange; the implied offer, a transaction whose details are understood beforehand by both parties, such as at a supermarket; and the credited offer, in which payment occurs at the end of a designated period, such as a utility charge at the end of the month to a homeowner.

(583) Is underbidding permissible? May I buy goods and services sold by underbidders?

Goods and services that are sold by underbidders who lower prices in order to attract buyers away from (even verbally) agreed upon sales are forbidden, as is underbidding, unlike competitive bidding where prices have not yet been agreed upon; similarly, it is forbidden for a buyer to leave an (even verbally) agreed upon sale for a transaction with more favorable terms, even during the period of cancellation; it is also forbidden to artificially bid up a price on behalf of a seller.

(584) What damages does the seller compensate for?

then discovers a separate defect, the buyer is no longer entitled to return the item (because of the new damage) but is entitled to compensation for the previous defect.

(585) Is it permissible to buy an item without having seen it?

It is permissible to buy something without having seen it (e.g. mail-ordered purchases).

(586) Is the buyer entitled to return an item if he neglected to inspect the item before the sale?

If before the execution of the sale the seller instructs the buyer to first check the item (when practicable; for example, it would be difficult for a single buyer to individually check the quality of 10 kilos of apples) and the buyer fails to do so, the seller is no longer obligated to accept a return, though it is permissible for him to do so.

(587) May I sell goods that are inherently filthy?

It is impermissible to sell goods that are inherently filthy (e.g. the milk of animals forbidden to eat) or affected with irremovable filth (e.g. liquor in chocolate).

(588) Is a transaction that keeps the price ambiguous or unknown valid?

The price and the currency must be known to both buyer and seller, without any conditions linking future events with price; the following statements are invalid: “Buy this now and pay me later when you know the price”; “The item is yours. Just pay me whatever he paid”; “Pay that man whatever he charges and take delivery now.

(589) What compensation is the buyer entitled to if returning the item is not possible?

If returning the defective item becomes impracticable (e.g. partially eaten food in a restaurant) or impossible (e.g. appliance destroyed in fire by faulty electrics), then the buyer is entitled, at the seller’s discretion, to either:

1) a replacement; or

2) a monetary compensation, measured as the percentage of the total price of the item equivalent to the percentage that the defective portion would reduce the value of a similar item in the market, where the market item used for comparison would be the one with the lowest value (as measured during the time between the sale’s execution and the buyer’s possession).

The seller only compensates for the defect and its related damages, including those damages (and only those damages) necessary for the discovery of the defect (e.g. the defective power supply of a computer damages the central processing unit, but not the monitor; but the buyer

accidentally breaks the monitor screen; the seller is only obligated to replace the power supply and the central processing unit, not the monitor).

(590) Is an arbitrary sale of a general nature valid?

An arbitrary sale of a general nature is invalid, such as selling fish in the water (assuming the seller owns the body of water as in a fish farm), whose quantitative and qualitative value is unknown at the time of the contract.

(591) What are the guidelines regarding product pricing?

It is permissible to sell items at any price the seller chooses, whether at a discount or for a profit, as long as the discount or profit does not create (or is created by) artificial pricing, such as that created by hoarding, collusion, monopoly, and the like.

(592) Is it permissible to transact an item that has no intrinsic value?

It is not permissible. The item should be worth something, based on intrinsic value, such as an asset or service.

(593) Is underbidding permissible? May I buy goods and services sold by underbidders?

Goods and services that are sold by underbidders who lower prices in order to attract buyers away from (even verbally) agreed upon sales are forbidden, as is underbidding, unlike competitive bidding where prices have not yet been agreed upon; similarly, it is forbidden for a buyer to leave an (even verbally) agreed upon sale for a transaction with more favorable terms, even during the period of cancellation; it is also forbidden to artificially bid up a price on behalf of a seller.

(594) What are the conditions of sale of goods and services?

Conditions of sale of goods and services: 1) a valid buyer and seller; 2) an offer and acceptance; 3) unconditionality 4) immediacy; 5) the disclosure of all details pertaining to the sale's execution; and 6) an option to cancel.

(595) May I trade in goods that are naturally connected to the site of their origin?

Goods that are still naturally connected to the site of their origin are impermissible to sell until they are first separated, including, for example, fruit on the tree (unless the tree is first sold or the fruit first picked), wool on the sheep (unless the sheep is first sold or the wool first sheared), steel beams in a building (unless the building is first sold or the beam dismantled), milk in the udder (unless the animal is first sold or the udder first milked).

(596) May I trade in an item that is not in existence on the date of transaction?

It is impermissible to trade in the non-existent (e.g. unharvested crops or an unborn calf); though, it is worth making a distinction between something not yet naturally existent from something not yet manufactured (e.g. undeveloped property), where a purchase is legitimate because one does not speculate on the outcome of an event but rather invests in the production of a good; the exception occurs when the non-existent is purchased as a consequence of purchasing something that may instrumentally cause the existence of something non-existent (e.g. purchasing a cow that expects to give birth to a calf), which is permissible, as long as they are not sold separately.

(597) Is it permissible to keep the price unknown or contingent upon a separate event?

It is forbidden to sell goods and services in which the price is unknown or is contingent or conditioned upon the occurrence of a separate event; though while conditioning one contract on another is forbidden (e.g. the monthly payment on a bank's car lease depends on the amount of money deposited into the bank), joining two or more contracts into one contract is permissible (e.g. a contract to lease a car and a contract to deposit money with a bank as part of one contract).

(598) What compensation is the buyer entitled to in case of return of sold item?

The buyer is entitled, at the seller's discretion, to either a replacement or the original payment.

(599) Is it permissible to buy an item without having seen it?

It is permissible to buy something without having seen it (e.g. mail-ordered purchases).

(600) What are the conditions of validity for a buyer and seller?

The buyer and seller must both be:

- Sane;
- Adult, meaning both buyer and seller should have reached puberty (with some exceptions made based on customary practice, such as a responsible child selling fruit);
- Free from duress; meaning they should not be forced by an outside party to conduct transactions against their will;
- Acting in accordance with the Shariah; meaning that the permissibility of the transaction itself must not be obviated by the intention of the buyer or the seller. For instance, a Muslim weapons manufacturer must not sell weapons to a buyer at war with Muslims; a Muslim publisher must not offer printing services to an author spreading lies against Muslims; a Muslim computer programmer must not offer services to an aeronautics firm supplying weaponry to bomb Muslims; and so on;
- The seller must constructively own the item to be sold, or be legally authorized to represent the actual owner.

(601) What damages does the seller compensate for?

Then discovers a separate defect, the buyer is no longer entitled to return the item (because of the new damage) but is entitled to compensation for the previous defect.

(602) What are the basic guidelines for the seller who agrees to repair or replace an item after the sale takes place?

If before the sale the seller agrees to repair or replace an item after the sale takes place, he is obligated to do so; if after the sale it turns out that due to expense or inconvenience the seller is unable to repair or replace the item, he is minimally obligated to choose whether to repair the item until it functions satisfactorily, replace the item with an equivalent new or used item, or mutually agree with the buyer a monetary compensation that enables the buyer to repair or replace the item.

(603) Under what circumstances does it become impermissible to cancel a contract?

The possibility of cancellation expires under three circumstances:

- 1) A buyer is no longer entitled to return an item of low or defective quality if, upon discovery of the fault, he delays the item's return without a valid excuse, unless the seller agrees to accept the item back;
- 2) Once a buyer's ownership in an item ends, whether by sale, transfer or disposition, the buyer may not demand compensation for a defect; though if the original buyer sells the item and after a time is returned the item due to a defect from the original sale, he may demand compensation;
- 3) If the buying and selling parties agree a period of time during which the buyer is entitled to cancel a contract for reasons agreed upon explicitly (e.g. the buyer agrees to sample a magazine subscription for 3 months) or understood implicitly (e.g. the item is of low or defective quality), the buyer is no longer entitled to cancel a contract if the period expires, unless the seller agrees to accept the item back.

(604) Is it permissible to agree upon multiple agreements as part of one agreement?

It is impermissible to sell goods and services in which the seller (or buyer) offers the buyer (or seller) a choice of two or more possible agreements as part of the same agreement. For example, the seller contracts that a certain good is purchasable for \$10 today, \$5 tomorrow and \$3 the day after. This is different from a valid negotiation which occurs before the finalization of a contract.

(605) Is the buyer entitled to compensation for defective goods if they have been damaged, separately from the defect, by the buyer?

If the buyer damages the item and then discovers a separate defect, the buyer is no longer entitled to return the item (because of the new damage) but is entitled to compensation for the previous defect.

(606) What are the rules regarding payment – whether in cash or in kind – in case of spot and deferred transactions?

The amount and timing of payment must be agreed upon before delivery, whether the transaction is on spot or deferred:

- Cash for Goods: If the sale is a spot transaction and involves the payment of cash (or a like monetary instrument) for the delivery of goods, the seller is entitled to receive payment before delivery, though he may choose to waive this right;
- Goods for Goods: If the sale is a spot transaction in which only goods are exchanged, the two parties must make the exchange at the same time;
- Deferred Payment: Payment is deferrable when the seller agrees, as long as the payment date is known beforehand.

(607) What compensation is the buyer entitled to in case of return of sold item?

The buyer is entitled, at the seller's discretion, to either a replacement or the original payment.

(608) May I sell defective goods by intentionally withholding information about their defect?

It is impermissible to sell goods that are defective, where the seller intentionally withholds information about a defect; though if the defect was not known by either buyer or seller at the time of the sale, the sale may still be cancelled within the specified period of cancellation; qualitative or quantitative misrepresentation of any aspect of a good or service is impermissible and constitutes fraud, grounds for the aggrieved party to rescind the agreement at any time. The buyer, nevertheless, still has the choice of whether or not to accept the defective good.

(609) Is it permissible to indefinitely defer payment or make it contingent on a future event?

It is impermissible to sell goods whose payment is deferred to an unknown date and contingent on the occurrence of a future event (e.g. paying for an unborn calf on the date of its birth); deferred payment is permissible as long as the date is specified in the agreement.

(610) Is it permissible to transact an item that is effectively useless?

The item should not be of such a negligible amount that it is effectively useless (e.g. a drop of petrol) and the contract's execution must not deem the item unusable. It is invalid, for example, to sell one-half a car or one-fourth a horse because the usefulness of the car or horse is based on the physical integrity of the entire object.

(611) Is it permissible to buy an item without having seen it?

It is permissible to buy something without having seen it (e.g. mail-ordered purchases).

(612) Is it permissible to keep the price unknown or contingent upon a separate event?

It is forbidden to sell goods and services in which the price is unknown or is contingent or conditioned upon the occurrence of a separate event; though while conditioning one contract on another is forbidden (e.g. the monthly payment on a bank's car lease depends on the amount of money deposited into the bank), joining two or more contracts into one contract is permissible (e.g. a contract to lease a car and a contract to deposit money with a bank as part of one contract).

(613) What compensation is the buyer entitled to if returning the item is not possible?

If returning the defective item becomes impracticable (e.g. partially eaten food in a restaurant) or impossible (e.g. appliance destroyed in fire by faulty electrics), then the buyer is entitled, at the seller's discretion, to either:

1) a replacement; or

2) a monetary compensation, measured as the percentage of the total price of the item equivalent to the percentage that the defective portion would reduce the value of a similar item in the market, where the market item used for comparison would be the one with the lowest value (as measured during the time between the sale's execution and the buyer's possession).

The seller only compensates for the defect and its related damages, including those damages (and only those damages) necessary for the discovery of the defect (e.g. the defective power supply of a computer damages the central processing unit, but not the monitor; but the buyer accidentally breaks the monitor screen; the seller is only obligated to replace the power supply and the central processing unit, not the monitor).

(614) What options are available to the buyer if returning the defective item is practically impossible?

If returning the defective item becomes impracticable or impossible, then the buyer is entitled, at the seller's discretion, to either:

1) a replacement; or

2) a monetary compensation

(615) What are the essentials of a valid transaction?

The essentials of a valid transaction in Islam are:

- 1) Item
- 2) Price
- 3) Valid buyer and seller
- 4) Offer and acceptance
- 5) Unconditional agreement
- 6) Immediate execution
- 7) Ownership

(616) Is it permissible to extend the date on which deferred payment is due if the buyer is unable to pay?

In a sale for which payment is deferred and the debtor (buyer) is unable to pay even on the payment date, it is recommended for the creditor to grant the debtor an extension.

GENERAL FINANCE QUESTIONS

(617) Is a transaction involving dissimilar items sold by weight deemed valid?

It is permissible to trade two different goods of different weights (e.g. 1 kg of rice for 5 kg of wheat) and, if not transacted on spot, the goods should be kept separately.

(618) What is the Shariah ruling in regard to a Muslim depositing his money in a conventional bank?

It is unlawful for a Muslim to deposit his money in a conventional bank when it is possible to deposit the money in a comparable Islamic bank.

(619) Is the prohibition of interest the same in whether one deposits in a bank located in a Muslim or a non-Muslim country?

The ruling in regard to depositors taking interest is the same whether the bank is located in a Muslim or in a non-Muslim country. The interest earned on the deposits is unlawful for the Muslim to consume or use to his personal benefit.

(620) May I defer payment when transacting an item sold by weight with an item sold by measurement?

It is permissible to defer payment (or exchange) when transacting items sold by weight with items sold by measurement or counting (or vice versa); it is a condition for the validity of such a trade that the items be of different categories.

(621) What is the liability of a third party that acquired misappropriated goods bona fide?

Third parties (i.e. non-thief and non-owner) who acquire the stolen property, whether by purchase, loan, endowment, gift, inheritance, bequest, or other means, are obligated to return the item to the original owner (and compensate for damage and depreciation), even if they had no prior knowledge of the property's misappropriation.

(622) Is it permissible to invest in anything that could be used in unlawful ways?

It is impermissible to invest in anything when one is certain the investment will not be used lawfully, and offensive when one doubts whether the investment will be used lawfully.

(623) How are gifts, endowments and charitable contributions classified?

Gifts, endowments and charitable contributions are classified according to the circumstances in which they are given:

- 1) Without a will, during the giver's lifetime, they are considered to be from the giver's personal property;
- 2) Without a will, after the giver's lifetime, they are considered to be part of the bequest;
- 3) In a will, they are considered to be part of the bequest; and

4) With or without a will, if they are given under circumstances that ultimately lead to the testator's death (e.g. illness, war, travel, etc.), they are considered bequests.

(624) Is it lawful to purchase the business license of a company that operates on the basis of riba when it is being sold and none of its riba-based assets remain, with the intention to make its operations Shariah-compliant?

It is lawful to purchase the business license of a business whose operations are riba-based for the purpose of making them Shariah compliant.

(625) What should the bank do with money held in accounts for extended periods of time for which there is no claimant?

These amounts may be given away in charity. If the rightful owner returns, he must be informed of what was done. If he still demands the money, the bank is financially obligated to provide compensation from its charitable accounts.

(626) May I defer payment or agree upon any rate when buying an item?

It is permissible to agree upon any rate of exchange or to defer payment when buying any item sold by weight, measurement or counting with cash, gold, or silver.

(627) May I defer payment or agree upon any rate when buying an item?

It is permissible to agree upon any rate of exchange or to defer payment when buying any item sold by weight, measurement or counting with cash, gold, or silver.

(628) May I deal in stolen property?

It is impermissible to deal in stolen property that one is certain is stolen; if there is doubt then it is permissible to deal in though it is always superior to avoid the doubtful.

(629) What is the Shariah ruling with regard to an agreement with a vendor in which he is required to inspect new cars for the bank and guarantee their operation for a certain period of time in return for charging a certain fee?

It is lawful that a fee be paid to a vendor for the inspection of the cars and their repair when they break down. On the other hand, an agreement that a certain amount will be given to him for guaranteeing any damage sustained by each car during a period of time in addition to his pledging to repair the same is a contract for something undefined and therefore invalid.

(630) Am I liable to return any wrongfully acquired property?

It is obligatory to return wrongfully taken property to the rightful owner as soon as one is able, even if at one's own expense assuming no harm comes to one's own or another's life or property. The one who misappropriated is obligated to make every kind of reasonable effort to return the property (or its equivalent market value, if applicable) to the rightful owner.

The one who misappropriated is obligated to return the very item that was taken, regardless of depreciation, unless the item was lost or destroyed ("destroyed" refers to extensive damage that seriously diminishes the usefulness of something), in which case he repays monetarily an amount equivalent to the market value of the item, even if he was not responsible for its loss or destruction.

(631) What does the Shariah say about begging?

Begging is offensive for those not in need, where a person in "need" is defined as one unable to feed oneself and one's dependents for a period of a day, whether due to an inability to earn a livelihood or because of physical incapacity caused by illness or old age. Further, it is offensive for the individual not in need to accept voluntary charity. For the individual unable to fulfill the basic requirement of feeding one's family for the day, begging is permissible. Begging while pretending to be needy is absolutely forbidden.

(632) May I compensate for misappropriation by returning the equivalent market value of the misappropriated item?

If the owner and the one who misappropriated both agree that the owner will take the equivalent market value of the misappropriated item rather than the item itself, the item becomes permissible for the one who misappropriated to keep and use. Market value is measured as the highest market price between the times of theft and loss, destruction or unavailability.

(633) Is it permissible for the merchant or the importer to pay the bank a 20% profit margin on the deal in order to guarantee the transfer of the value of the goods to the exporter within a month? If not, what is the Shariah compliant way of executing such a transaction?

It is not lawful for the importer to pay the bank 20% as profit margin on the deal in order to guarantee the transfer of the value of goods to the exporter as that would be analogous to the importer borrowing the price of the goods from the bank at that rate. The Shariah-compliant way of executing the transaction is by means of a Musharakah.

The bank becomes the merchant's partner in the ownership of goods by purchasing a portion of the goods in foreign currency. Thereafter, each has the right to contract for a commercial partnership which accords both partners the right to dispose of all the goods and share profits on the basis of an agreement between them. In this way the merchant is able to transfer the price of the goods to the exporter in foreign currency paid by the bank. If a loss occurs, it is absorbed by partners in proportion to their share of investment capital.

(634) In case local regulations require all banks to deposit a certain amount of money in a conventional bank at a specified interest rate, what does an Islamic bank do?

In such a case, the Islamic bank has the option of entering into a Mudarabah contract with the conventional bank. The Islamic bank assumes the role of investor, while the conventional bank is the working partner. The working partner invests the money contributed by the investor in lawful investments, and the proceeds are divided as per the Mudarabah contract.

(635) May I trade an item sold by weight with an item sold by measurement?

It is valid to trade an item customarily sold by weight with an item customarily sold by measurement or counting (or vice versa). It is permissible to agree upon any rate of exchange; it is a condition for the validity of such a trade that the items be of different categories.

(636) Is it lawful for the bank to accept the guarantee of an owner for a contractor constructing a building for the guarantor himself?

It is lawful for the bank to accept the guarantee of an owner for a contractor in the construction of something for the guarantor himself since the guarantor acts as a surety in relation to the work that is taking place between the contractor and the bank. The fact that the construction is undertaken in the guarantor's interest has no bearing on the matter.

(637) Is it permissible for brokers to charge a fee for their service?

It is permissible for brokers and managers to charge a fee for their services, either as a pre-agreed fixed amount or as a pre-agreed percentage of the stock's price or the fund's net asset value.

(638) What does the Shariah say regarding supporting male and female relatives?

One is obligated to support one's needy male relatives (i.e. brother, uncle, cousin, nephew, etc.) who are unable to support themselves as a result of an illness or disability, though if they are needy for reasons other than illness or disability supporting them is merely recommended; the proportion of their financial support in relation to one's direct dependents is the same as the proportion of their inheritance in relation to one's direct dependents.

One is also obligated to support one's needy unmarried female relatives (i.e. sister, aunt, cousin, niece, etc.) who are unable to support themselves regardless of the causes of their neediness; the obligation of supporting needy married females returns to the husband. The one supporting the relative is not entitled to claim any portion of the obligatory or non-obligatory maintenance that has already been provided.

(639) What are some lawful methods for paying trade bills?

The importer pays local currency to the bank in return for the purchase price at the time of payment. The bank accepts this amount until it has sufficient foreign currency in its reserves to purchase the foreign currency at the current rate of exchange.

If anything remains of the local currency, the bank returns it to the importer. If the amount is insufficient, the bank requests the importer to make up the difference. Thereafter, the foreign currency is transferred to the exporter.

Another permissible way of clearing payment is for the importer to pay local currency to the bank on the understanding that the payment is in return for the amount of obligation in foreign currency at the current rate. The bank receives this amount as the exporter's agent and the importer is cleared of responsibility. The exporter receives the full price of the goods through the bank which he may collect in local currency or alternatively have the bank as its agent convert it into foreign currency before making the transfer.

(640) May I keep any benefit derived from wrongfully taken property?

It is impermissible to keep for oneself the benefit derived from wrongfully taken property (e.g. profits from the sale of real estate purchased with wrongfully taken money); while the property should be returned to the owner, the resulting benefit should be distributed in charity. It is also impermissible to keep for oneself the benefit derived from property (e.g. profit) one does not own without the owner's permission, even if there is no intention to wrongfully take the property itself but to merely benefit from its usufruct (e.g. borrowing a vehicle, milking a cow or investing money without the owner's permission).

(641) May I defer payment when transacting an item sold by weight with an item sold by measurement?

It is permissible to defer payment (or exchange) when transacting items sold by weight with items sold by measurement or counting (or vice versa); it is a condition for the validity of such a trade that the items be of different categories.

(642) Some debtors have the ability to repay on time but continue to defer. Is the bank permitted to charge them a fee?

It is not lawful to charge anything above the due amount for a delay in repayment regardless of whether the delay is intentional or not. Instead the bank should seek legal recourse against the debtor and at the time of entering into the transaction should include a charity clause entitling the payment of penalties to a designated charity.

(643) Is it lawful to seek the return of a brokerage fee paid to a broker if the deal is dissolved after the contract is signed?

The amount paid as the brokerage fee is the right of the broker and may not be taken back after the contract is signed regardless of whether or not the contract is subsequently dissolved.

(644) Is it permissible for the bank to offer incentives such as contests for prizes to every lessee who opens an account with the bank and gives it the right to deduct lease payments directly from these accounts?

It is permissible to offer incentives such as contests for permissible prizes to attract lessees to open accounts at the bank in order to have their lease payments deducted directly from them.

(645) Is it lawful for the bank to receive a commission for Takaful policies based on the number of policies taken out by clients having purchased cars through the bank?

It is lawful for the bank to receive a brokerage fee for serving as an intermediary between the client and the insurance company. This fee is linked directly to the amount of the bank's effort, ascertainable through the insurance documentation.

(646) Is it obligatory to earn a halal income?

It is obligatory to earn a lawful income if one is unable to support oneself and one's dependents without doing so, though it is merely permissible if one is able to support oneself and one's dependents without earning.

(647) Am I liable to inform the owner of misappropriation of property upon its return?

When returning misappropriated property, it is not a condition that the taker inform the owner that the property had been misappropriated; rather, the property may be returned by any means possible, whether as a gift, secretly or openly, provided the one returning does not accept any form of consideration in return.

(648) Is it permissible for the bank to offer privileges to holders of certain types of accounts?

It is lawful for the bank to offer account holders, whether in general or only to a specific group, with special privileges such as gifts and prizes provided these privileges are not made conditional upon opening an account and are not mentioned at the time of opening an account.

(649) What is the Shariah perspective with regard to the bank extending financing for the import of goods in addition to issuing documentary credit?

The procedure for issuing documentary credit does not usually include the bank's extension of financing to the client; all of the financing is usually undertaken by the client himself. The bank serves as the client's agent and receives a fee for the services it performs with respect to the issuance of the documentary credit.

If the client advances only a part of the documentary credit's value and the bank expends some of its own funds, then it is necessary for the bank to receive a percentage of the profits according to the rules of a Musharakah rather than a fee.

(650) What does the Shariah say regarding supporting male and female relatives?

One is obligated to support one's needy male relatives (i.e. brother, uncle, cousin, nephew, etc.) who are unable to support themselves as a result of an illness or disability, though if they are needy for reasons other than illness or disability supporting them is merely recommended; the proportion of their financial support in relation to one's direct dependents is the same as the proportion of their inheritance in relation to one's direct dependents.

One is also obligated to support one's needy unmarried female relatives (i.e. sister, aunt, cousin, niece, etc.) who are unable to support themselves regardless of the causes of their neediness; the obligation of supporting needy married females returns to the husband. The one supporting the relative is not entitled to claim any portion of the obligatory or non-obligatory maintenance that has already been provided.

(651) May I trade like items sold by measurement?

It is permissible to transact any like goods sold by measurement or counting (e.g. one type of orange for another). It is not obligatory that they be equal weight, but they must be equal in measure or count, and the transaction must be conducted on spot.

(652) What is my liability with regards to misappropriated goods that are altered in a way that affects their market value?

If a good is neither damaged nor destroyed but merely altered in a manner that increases or decreases the value of the good, the owner is entitled to choose whether to demand compensation or accept the good back as it is.

(653) May I trade an item sold by weight with an item sold by measurement?

It is valid to trade an item customarily sold by weight with an item customarily sold by measurement or counting (or vice versa). It is permissible to agree upon any rate of exchange; it is a condition for the validity of such a trade that the items be of different categories.

(654) What is my liability as regards misappropriated money if the owner is not traceable?

If money was taken and every reasonable effort has been made to locate the original owner but he is untraceable or no longer exists, the one who misappropriated should give the money away in charity; it being superior to give charity to those eligible to receive zakat rather than to an ordinary charity; while the debt would be cleared, it would be superior, but not obligatory, to continue searching for the original owner; it is impermissible to give the money away in charity when one is able to locate the rightful owner.

(655) Is a transaction involving “like” items sold by weight deemed valid?

A transaction involving “like” items sold by weight (e.g. one type of wheat for another) is valid. When transacting any like goods sold by weight, it is obligatory that they be of equal weight and, if not transacted on spot, be kept separately.

(656) Is it lawful for the bank to pay a brokerage fee to a party who brings in people interested in leasing unoccupied properties being offered by it?

Yes, it is permissible to pay such a brokerage fee as such a payment is like a commission paid to one who brings a client or customer to the bank.

(657) May I compensate for misappropriation by returning the equivalent market value of the misappropriated item?

If the owner and the one who misappropriated both agree that the owner will take the equivalent market value of the misappropriated item rather than the item itself, the item becomes permissible for the one who misappropriated to keep and use. Market value is measured as the highest market price between the times of theft and loss, destruction or unavailability.

(658) Is it permissible to derive benefit in any way from unlawfully gained property?

It is impermissible to buy, sell, trade, use, rent, borrow, finance, invest in, bequest, endow, gift, give in charity, put up as collateral, give a guarantee for or derive any form of benefit from unlawfully gained property that one is certain is unlawfully gained; if there is doubt then it is permissible though it is always superior to avoid the doubtful.

(659) Is it permissible to enter into a contract that directly entails or assists in the unlawful?

It is unlawful to enter into a contract that directly entails the unlawful (i.e. work that is itself unlawful or even assists in the unlawful) or to work for an employer (even if one does not participate directly in the transactions) whose primary business is unlawful (e.g. interest-based banking, insurance, futures trading).

(660) Is it permissible to engage in doubtful transactions?

As a general rule, it is offensive to engage in the doubtful. In relation to commercial dealings, any transaction in which one doubts its permissibility it is offensive to engage in.

(661) What are some lawful methods for paying trade bills?

The importer pays local currency to the bank in return for the purchase price at the time of payment. The bank accepts this amount until it has sufficient foreign currency in its reserves to purchase the foreign currency at the current rate of exchange.

If anything remains of the local currency, the bank returns it to the importer. If the amount is insufficient, the bank requests the importer to make up the difference. Thereafter, the foreign currency is transferred to the exporter.

Another permissible way of clearing payment is for the importer to pay local currency to the bank on the understanding that the payment is in return for the amount of obligation in foreign currency at the current rate. The bank receives this amount as the exporter's agent and the importer is cleared of responsibility. The exporter receives the full price of the goods through the bank which he may collect in local currency or alternatively have the bank as its agent convert it into foreign currency before making the transfer.

(662) May I trade an item sold by weight with an item sold by measurement?

It is valid to trade an item customarily sold by weight with an item customarily sold by measurement or counting (or vice versa). It is permissible to agree upon any rate of exchange; it is a condition for the validity of such a trade that the items be of different categories.

(663) Is it permissible to give to a beggar when some of the money is being used unlawfully?

It is impermissible to give to any beggar that one is certain will not use the money lawfully; it is offensive to give to any beggar that one doubts will use the money lawfully.

(664) What should the bank do with money held in accounts for extended periods of time for which there is no claimant?

These amounts may be given away in charity. If the rightful owner returns, he must be informed of what was done. If he still demands the money, the bank is financially obligated to provide compensation from its charitable accounts.

(665) May I deal in stolen property?

It is impermissible to deal in stolen property that one is certain is stolen; if there is doubt then it is permissible to deal in though it is always superior to avoid the doubtful.

(666) Is it lawful to purchase the business license of a company that operates on the basis of riba when it is being sold and none of its riba-based assets remain, with the intention to make its operations Shariah-compliant?

It is lawful to purchase the business license of a business whose operations are riba-based for the purpose of making them Shariah compliant.

(667) Is it lawful to transfer a right to benefits from a Takaful insurance plan to the purchase pledger at the conclusion of a Murabaha sales contract?

It is lawful to transfer a right to benefits from a Takaful insurance plan to the purchase pledger at the conclusion of a Murabaha sales contract, where he also serves as the bank's agent in settling accounts with the insurance company. Once the damage or loss to the goods if any is recompensed, the client does not require recourse to the bank and may deal directly with the Takaful company alone.

(668) What does the Shariah say regarding the obligation of supporting one's children?

Both men and women are equally obligated to support their children until the child reaches adulthood, including those of their Muslim or non-Muslim children (grandchildren, great grandchildren, and their direct descendants) stricken by poverty (obligatory only when there is poverty), even if these children grow to adulthood while they are still impoverished.

The obligation of support rests on parents who have the means to do so once they have paid the typical maintenance for themselves (and one's wife, if a husband) necessary for one day before spending it on one's children. In order to satisfy the obligation to support one's child, which includes repaying any debts the child incurs in order to cover the child's living expenses, one is even obligated to sell one's own property in excess of one's needs.

The right of the younger child comes before the right of the older one (respectively for grandchildren, great grandchildren, and their direct descendants); but the right of one's parent comes before the right of one's child; though this precedence is only relevant in the absence of sufficient funds to support everyone; male and female children have an equal right to maintenance.

(669) Some debtors have the ability to repay on time but continue to defer. Is the bank permitted to charge them a fee?

It is not lawful to charge anything above the due amount for a delay in repayment regardless of whether the delay is intentional or not. Instead the bank should seek legal recourse against the debtor and at the time of entering into the transaction should include a charity clause entitling the payment of penalties to a designated charity.

(670) Is it lawful to seek the return of a brokerage fee paid to a broker if the deal is dissolved after the contract is signed?

The amount paid as the brokerage fee is the right of the broker and may not be taken back after the contract is signed regardless of whether or not the contract is subsequently dissolved.

(671) What is the Shariah position in regard to purchasing automobiles from a certain person with the understanding that he will serve as a paid agent for the sale of cars as well as act as guarantor for the buyers for any possible damages that may occur?

It is not permissible to appoint the same person as an agent and as a guarantor during the same time period.

(672) Is it permissible for the bank to offer incentives such as contests for prizes to every lessee who opens an account with the bank and gives it the right to deduct lease payments directly from these accounts?

It is permissible to offer incentives such as contests for permissible prizes to attract lessees to open accounts at the bank in order to have their lease payments deducted directly from them.

(673) Is it permissible for brokers to charge a fee for their service?

It is permissible for brokers and managers to charge a fee for their services, either as a pre-agreed fixed amount or as a pre-agreed percentage of the stock's price or the fund's net asset value.

(674) Is it obligatory to earn a halal income?

It is obligatory to earn a lawful income if one is unable to support oneself and one's dependents without doing so, though it is merely permissible if one is able to support oneself and one's dependents without earning.

(675) What must I do if I am unsure of the amount misappropriated?

If the one who misappropriated is unsure of the amount taken, it is recommended to estimate a bit on the higher side.

(676) Is it lawful for the bank to receive a commission for Takaful policies based on the number of policies taken out by clients having purchased cars through the bank?

It is lawful for the bank to receive a brokerage fee for serving as an intermediary between the client and the insurance company. This fee is linked directly to the amount of the bank's effort, ascertainable through the insurance documentation.

(677) Is it permissible for the bank to charge a fee for the services it provides such as money transfers. Will it be lawful for the bank to increase its fee for this service in proportion to the amount transferred?

It is permissible for the bank to charge a fee for services such as money transfers. The fee charged must be in proportion to the service being provided. Therefore, if the bank concludes that the costs differ with differences in the sums to be transferred, the bank may increase its fee

with increases in the sums. If, however, the costs do not differ, then a higher fee for a larger sum may not be charged.

(678) May I trade like items sold by measurement?

It is permissible to transact any like goods sold by measurement or counting (e.g. one type of orange for another). It is not obligatory that they be equal weight, but they must be equal in measure or count, and the transaction must be conducted on spot.

(679) Is it permissible to accept compensation from a source whose earnings are unlawful?

It is impermissible to accept any form of compensation from a source when the recipient is certain that the very earnings used in the transaction were unlawfully gained; though if the recipient is doubtful about the unlawfulness of the earnings then taking compensation is permissible because one assumes that one takes from the lawful portion of the earnings.

(680) May I keep any benefit derived from wrongfully taken property?

It is impermissible to keep for oneself the benefit derived from wrongfully taken property (e.g. profits from the sale of real estate purchased with wrongfully taken money); while the property should be returned to the owner, the resulting benefit should be distributed in charity. It is also impermissible to keep for oneself the benefit derived from property (e.g. profit) one does not own without the owner's permission, even if there is no intention to wrongfully take the property itself but to merely benefit from its usufruct (e.g. borrowing a vehicle, milking a cow or investing money without the owner's permission).

(681) Is it permissible to derive benefit in any way from unlawfully gained property?

It is impermissible to buy, sell, trade, use, rent, borrow, finance, invest in, bequest, endow, gift, give in charity, put up as collateral, give a guarantee for or derive any form of benefit from unlawfully gained property that one is certain is unlawfully gained; if there is doubt then it is permissible though it is always superior to avoid the doubtful.

(682) Am I liable for any misappropriations by me during my childhood?

It is obligatory for one to return items misappropriated during childhood oneself

(683) Is one who benefits from misappropriation liable to repay, even if he was not involved in the act of misappropriation?

Repayment is the responsibility of the one who misappropriates, not the responsibility of the one who merely benefits from the misappropriation (e.g. if the father steals food and the family benefits, only the father is liable to repay), unless the beneficiary is also involved.

(684) Is it a condition for the validity of an investment that the partners or shareholders interact or exert influence on the business?

It is not a condition for the validity of an investment (e.g. stocks, mutual funds, business partnerships) that partners or shareholders of the business physically interact with one another or even meet with each other a single time, or that they exert any form of direct or indirect influence on the running of the business; it would be permissible for none of the shareholders to ever meet or even to know one another, provided the managing partners of the business maintained a level of interaction, though not necessarily physical, customary for the success of the business.

(685) If a client maintains accounts at an Islamic bank but also holds an interest-bearing account at a conventional bank, is it lawful for the Islamic bank to accept funds that have come directly from his interest-bearing deposits?

It is lawful for the Islamic bank to accept these funds because there is no connection between the Islamic bank and the source of these amounts. The one dealing directly in interest is considered culpable.

(686) May I defer payment when transacting an item sold by weight with an item sold by measurement?

It is permissible to defer payment (or exchange) when transacting items sold by weight with items sold by measurement or counting (or vice versa); it is a condition for the validity of such a trade that the items be of different categories.

(687) May I trade an item sold by weight with an item sold by measurement?

It is valid to trade an item customarily sold by weight with an item customarily sold by measurement or counting (or vice versa). It is permissible to agree upon any rate of exchange; it is a condition for the validity of such a trade that the items be of different categories.

(688) Is it permissible to enter into a contract that directly entails or assists in the unlawful?

It is unlawful to enter into a contract that directly entails the unlawful (i.e. work that is itself unlawful or even assists in the unlawful) or to work for an employer (even if one does not participate directly in the transactions) whose primary business is unlawful (e.g. interest-based banking, insurance, futures trading).

(689) Who is obliged to support a needy parent: their spouse or their children?

If one parent is needy and the other is not, the obligation of providing support first returns to the parent who is not needy, then the obligation goes to the children.

(690) What must I do if I am unsure of the amount misappropriated?

If the one who misappropriated is unsure of the amount taken, it is recommended to estimate a bit on the higher side.

(691) May I defer payment when transacting an item sold by weight with an item sold by measurement?

It is permissible to defer payment (or exchange) when transacting items sold by weight with items sold by measurement or counting (or vice versa); it is a condition for the validity of such a trade that the items be of different categories.

(692) Is it lawful to seek the return of a brokerage fee paid to a broker if the deal is dissolved after the contract is signed?

The amount paid as the brokerage fee is the right of the broker and may not be taken back after the contract is signed regardless of whether or not the contract is subsequently dissolved.

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It is permissible to transact any like goods sold by measurement or counting (e.g. one type of orange for another). It is not obligatory that they be equal weight, but they must be equal in measure or count, and the transaction must be conducted on spot

(694) May I compensate for misappropriation by returning the equivalent market value of the misappropriated item?

If the owner and the one who misappropriated both agree that the owner will take the equivalent market value of the misappropriated item rather than the item itself, the item becomes permissible for the one who misappropriated to keep and use. Market value is measured as the highest market price between the times of theft and loss, destruction or unavailability.

(695) What is the Shariah ruling with regard to the bank's payment of income tax from the amount deducted annually for the investment risk reserve?

Where applicable, the bank must pay tax from the amount deducted annually for the investment risk reserve.

(696) What is my liability as regards misappropriated money if the owner is not traceable?

If money was taken and every reasonable effort has been made to locate the original owner but he is untraceable or no longer exists, the one who misappropriated should give the money away in charity; it being superior to give charity to those eligible to receive zakat rather than an ordinary charity; while the debt would be cleared, it would be superior, but not obligatory, to continue searching for the original owner; it is impermissible to give the money away in charity when one is able to locate the rightful owner.

(697) What should the bank do with outdated, unclaimed cheques issued in favor of clients whose accounts are now dormant?

It is permissible to give these funds away in charity after the bank has made every attempt to contact the client. If the owner returns after the funds have already been given away, he must

be informed of what was done and if he still demands payment he must be reimbursed from the general shareholder's account.

(698) Is it permissible to perform the pilgrimage with borrowed money?

A pilgrimage performed with borrowed money is valid provided the conditions for performing pilgrimage are met and the creditor obliges. The debtor is entitled to perform the pilgrimage without taking permission from the creditors if the debtor has no arrears and if his performing the pilgrimage does not hinder his ability to continue repaying the creditor on schedule. It goes without saying that one may not take an interest-based loan in order to perform pilgrimage.

(699) What is Al Bai' Bithaman Ajil (BBA) house financing?

THE BBA house financing is an Islamic house financing facility, which is based on the shariah concept of Al Bai' Bithaman Ajil (BBA). It is a contract of deferred payment sale i.e. the sale of goods on deferred payment basis at an agreed selling price, which includes a profit margin agreed by both parties. Profit in this context is justified since it is derived from the buying and selling transaction as opposed to interests accruing from the principal lent out.

(700) What are the main characteristics of a BBA house financing?

All the components to determine the selling price have to be fixed because the selling price has to be fixed at the time the contract is made. Hence, the profit rate for the BBA financing is fixed throughout the period of financing.

(701) What are the mechanics of the BBA house financing?

- Customer identifies the asset to be purchased.
- Bank determines the requirements of the customer, in relation to the financing period and nature of repayment.
- Bank purchases the assets concerned.
- Bank subsequently sells the relevant asset/property to the customer at an agreed price, which consist of: actual cost of the asset to the bank i.e. financing amount; bank's profit margin.
- Customer is to settle the payment by installment payment through out the financing /period.

(702) What are the differences between BBA house financing and an ordinary conventional housing loan?

An ordinary conventional housing loan is given on the basis of debtor/creditor relationship. Whereby, the amount of loan is being charged interest, normally quoted at a certain percentage above the Base Lending Rate (BLR) over the loan period, repayable in periodic installment. The BLR will fluctuate up or down and it will affect the total loan cost. Simultaneously, arrears in conventional loans are normally capitalized. However, under the Islamic banking scheme, since the BBA concept is being applied, a seller-buyer relationship will be established and the selling price is fixed upfront. The sales price is then repaid in periodic installments and the agreed installments will remain fixed throughout the financing period. As such, a customer's interest rate risk is eliminated. Furthermore, arrears will not be capitalized.

(703) Will my monthly installments change according to the BLR (Base Lending Rate)?

The BBA financing scheme is not tagged to the BLR. Thus, the installments will be fixed according to the rates declared upon agreement.

(704) Is it possible to compute the selling price?

Yes, the selling price is computed as per the formula:

Selling price = (monthly installment X number of financing months) + grace period profit (if any).

Note: Monthly installment is computed using the agreed profit rate on a constant rate of return and monthly rest. The grace period profit is charged when the bank is financing property under construction. As such, during the construction period, customer will pay the grace period profit only.

Example:

Financing amount: RM100000.00, Profit rate: 8%, Financing period: 20 years Installment per month: RM837.00

Selling price = (RM837.00 X (20 X 12)) + 0 = RM200880.00

(705) Is early settlement allowed under the BBA financing facility?

Yes. In addition, the customer is not required to give advance notice to the bank for the early settlement i.e. financing is settled before the completion of the financing tenor. As such, there is no early settlement penalty fees/charges imposed on the customer.

(706) Is the customer entitled for rebate (Ibra') in case of early settlement?

Yes, the customer will be entitled for a rebate on the concept of Ibra' for the unearned profit at the bank's discretion. The rebate is in the form of a reduction in the balance outstanding. The early settlement amount is the net figure after deducting the rebate.

(707) What is the period of financing for the BBA house financing?

Normally for house or residential property financing, the maximum repayment period is 30 years or at the age of 65, whichever is earlier. It might differ from one bank to another.

(708) What is the margin of financing for the BBA house financing?

The margin of financing differs from one bank to another. Generally, the margin ranges from 70% to 100% against the sales & purchase value or the current market value. Again, the customer's repayment capacity will also affect the margin of financing that the bank can offer.

(709) Is there security/collateral requirement under the BBA house financing?

Yes, the property financed by the bank will be used as the security/collateral for the financing facility under the BBA house financing. The property is usually secured by way of first party charge.

(710) What are the legal documents for the BBA house financing?

- Letter of offer
- Property sale agreement
- Property purchase agreement
- Legal charge or,
- Assignment and power of attorney
- Or any other Islamic financing documents that are required for the house financing

(711) Is there any restriction in applying for the BBA house financing?

Under the BBA house financing scheme, the purpose of financing is important. It must be clearly stated and revealed to ensure that the bank is not financing a customer whose income or nature of business income is derived from a forbidden source or haram income under the requirement of the syariah. These include but not limited to the following:

Customers who are selling alcohol, drugs, pork and items relating to them

Customers who are operating gambling business and entertainment outlets selling liquors

Customers who are involved in immoral business such as prostitution

Properties, which are going to be used for haram activities.

(712) Can a non-Muslim apply for the BBA house financing?

Yes, the same financing facility is available to the non-Muslim.

(713) Can a foreigner or non-resident apply for the BBA house financing?

Yes, the financing facility is also open to a foreigner or non-resident. However, they are subjected to the BNM ECM 6, which includes property value must be RM250,000 and above, the FIC approval is required and maximum margin of financing is 60%.

(714) What is Mortgage Takaful?

Mortgage Takaful is the equivalent of the MRTA, whereby a protection on the financing amount will be given, in case any untoward incidents were to befall the customer. Even though it is not compulsory, most banks are making it a financing condition to encourage this mortgage takaful protection, which is beneficial to the customers and their next of kin.

Most banks are providing financing assistance for the takaful premium. Normally, the mortgage takaful premium will be included in the financing amount and will be subjected to the agreed margin of financing.

(715) What are the advantages of the BBA house financing?

- The total cost of the property purchased is determined at the time of contract or aqad.
- There is no additional or “hidden” cost that will change the price of the property purchased.
- The transaction is transparent.
- There is no element of uncertainties or gharar.
- Customers will know exactly when the financing will end.
- There will be no compounding of arrears and outstanding penalty charges.
- Presently, there is no additional/penalty charge on outstanding miscellaneous charges.
- Repayment is not subjected to fluctuation of the BLR.
- Allows better financial planning.

(716) What is Family Takaful?

A family Takaful plan is a long-term savings and investment program with a fixed maturity period. Apart from enjoying investment profit, the plan provides mutual financial assistance among its participants.

The family takaful plan is a financial program that pools efforts to help the needy in times of need due to untimely death and other mishaps resulting in personal injury or disablement.

The takaful plans designed by the takaful company would enable participants to participate in a takaful scheme with the following aims:

- (a) To save regularly;
- (b) To invest with a view of earning profits which are shariah-compliant; and

(c) To avail of cover in the form of payment of takaful benefits to heir(s) should a participant die before the maturity date of his takaful plan.

(717) How does the family Takaful operate?

A person who participates in any family takaful plan is called a participant. A participant may choose any one of the plans offered by the company. The family takaful plans have a defined period of participation.

The takaful company and the participant will enter into a long-term takaful contract, which is based on the principle of Al-mudharabah (profit-sharing).

The takaful contract spells out clearly the rights and obligations of the parties to the contract. The participant is required to pay regularly the takaful instalments in consideration for his participation in the takaful plan.

The participant will decide the amount of takaful instalments that he wishes to pay, but such an amount shall be subject to the minimum sum as determined by the company.

Each takaful instalment paid by the participant shall be divided and credited by the takaful company into two separate accounts, namely the participant's account and the participant's special account. A substantial proportion, for example, such as 93% of this instalment is credited into his participant's account solely for the purpose of his savings and investment.

The balance is credited into his participant's special account as tabarru' for the purpose of mutual help. Mutual financial assistance such as takaful death benefits to fellow participants is paid from the participant's special account. What proportion of the takaful instalment to be relinquished as tabarru' and credited into the participant's special account is determined based on sound actuarial principles.

The takaful instalment credited into these two accounts will be pooled as a single fund for the purpose of investment activities undertaken by the takaful company in a manner permitted by the Syariah. Any profits generated from the investment shall be shared between the participant and the company in a ratio to be mutually agreed between the participant and the company in accordance with the contract of Al-Mudharabah. For instance, if the ratio agreed is 7:3 then the participant shall be entitled to 70% of the profits whilst the company shall be entitled to 30%.

The participant's share of the profits shall be credited into his participant's account. With the accumulation of such profits, the balance in the participant's account will increase over a period of time.

(718) What are the Family Takaful benefits?

In the event that a participant should die before the maturity of his family takaful plan, the following takaful benefits shall be paid to him:

- (i) The total amount of the takaful installments paid by the participant from the date of inception of his takaful plan to the due date of the instalment payment prior to his death and his share of profits from the investment of the installments which have been credited into his participant's account;
- (ii) The outstanding takaful instalments which would have been paid by the deceased participant should he survive. This outstanding amount is calculated from the date of his death to the date of maturity of his takaful plan which shall be paid from the participant's special account as agreed upon by all the participants in accordance with the takaful contract.

(719) What will be the takaful benefit plan if a participant survives until the date of maturity of his takaful plan?

- (i) The total amount of takaful instalments paid by the participant during the period of his participation plus his share of profits from the investment of the takaful instalments credited into his participant's accounts.
- (ii) The net surplus allocated to his participant's special account as shown in the last valuation of the participant's special accounts.

(720) Is it permissible for a mudharib to invest in the mudharabah contract that he himself is managing?

It is permissible for a mudharib who is managing a mudharabah venture to invest in that venture. Hence, in such a situation, he will assume the role of a partner and of a mudharib (he is both the capital provider and the entrepreneur).

(721) Let's say we have signed a contract with a contractor. Then, a new regulation is enacted by the authorities. In this case, who will bear the additional costs that have to be expended, as a result of the new regulation?

The Bank can include a stipulation in the contract, whereby the owner must bear additional costs that arise as a result of new laws and regulations.

(722) In the event that a participant is compelled to surrender or withdraw from the takaful plan before the maturity of his takaful plan, Would he be entitled to the surrender benefits?

Yes he is entitled to the surrender benefits. The participant is entitled to receive the proportion of his takaful instalments that have been credited into the participant's account including his share of investment profits. However, the amount that has been relinquished as tabarru' will not be refunded to him.

(723) What are the various types of family takaful plans available in the market?

- (a) Family takaful plan for education
- (b) Family takaful mortgage plan
- (c) Group family takaful plan
- (d) Group hospitalization and medical benefit

(724) How does the general takaful operate?

General takaful schemes are basically contracts of joint-guarantee, on a short-term basis (normally one year), between groups of participants to provide mutual compensation in the event of a defined loss.

The schemes are designed to meet the needs for protection of individuals and corporate bodies in relation to material loss or damage resulting from a catastrophe or disaster inflicted upon properties, assets or belongings of participants.

In the event of a catastrophe or disaster resulting in a loss or damage to a property or bodily injuries or other physical disability to a person, the owner of the property or the person concerned may suffer substantial financial losses.

For instance, if a house is destroyed or damaged by fire, the owner would certainly require a sufficient sum of money to repair the house, or rebuild new one as well as enough money to replace the damaged furniture, fixtures and fitting.

Similarly, a person being injured in an accident would require an adequate sum of money to pay for the medical treatment.

With the various general takaful schemes offered in the market, that person would be assured of takaful benefits in case of misfortune resulting from such loss or damage.

Participants of a general takaful scheme shall also enter into a contract with the company on the basis of the contract of Mudharabah. The contract stipulates the right and obligations of the participants as well as the company.

In consideration for participating in the various schemes, the participants agree to pay the takaful contributions as *tabarru'*. The company manages the general takaful business including managing the investment of the general takaful fund assets.

As the *al-Mudharib*, the takaful company will invest the general takaful fund in line with Shariah principles and all returns on the investment will be pooled back to the fund.

In line with the virtues of cooperation, shared responsibilities and mutual help as embodied in the concepts of takaful, the participants agree that the company shall pay from the general takaful fund, compensation or indemnity to fellow participants who have suffered a defined loss upon the occurrence of a catastrophe or disaster.

The fund shall also pay for other operational costs of general takaful business such as for the retakaful arrangements and the setting up of technical reserves.

Should there be a surplus (profits) in the general takaful fund after deducting all the operational costs of general takaful, that surplus will be shared between the participants and the company – provided the participants have not incurred any claims, and that no takaful benefits have been paid to them.

This sharing of the surplus will be in a ratio agreed in accordance with the contract of *Al-Mudharabah*. If the ratio agreed is 6:4, then 60% of the surplus will be shared among such participants whilst the balance 40% is the share of the company.

(725) The bank concluded a general undertaking to purchase international goods from a stock exchange, in order to sell them to a client on deferred payment. The bank obtained a binding promise from the client. Likewise, the bank is also bound by the promise to sell. What is the position of the Shari'ah on this matter?

According to the Shari'ah, it is not permissible to make the promise binding to both parties, that is the bank and the client. This is because a binding promise on both parties is similar to a contract, whereas this is not a contract. In this case, it is compulsory for a binding promise to be limited to one party only. The most suitable approach is for the bank to make the client bound by the promise.

(726) Is it allowed to purchase shares from a company based on specifications of the shares and the cost price, while deferring the transfer of ownership of the shares to the potential buyer to a determined future period?

In a pure sales contract (not salam or istisna') it is not permitted to sell any commodity, be it shares or others, where the delivery is deferred to a future date. This is because for a sales contract, the transfer of ownership must be made on the spot

(727) A company purchases a debt from a bank. Can the company then transfer that debt, at par, to another party, for example, to one of their branches?

It is permissible to do so, i.e. to transfer a debt, at par, to a third party (who is not the principal debtor). As the debt is transferred at par, the transaction is thus free from riba. Allah Knows best.

(728) The Bank concluded a contract of leasing for a group of condominiums and one of the conditions included is theof acquittal from defects that are found on the condominiums. The lessees subsequently agreed upon that condition. So, in this case, will the lessee bear the cost of basic maintenance and will the Bank be acquitted from their responsibilities?

In Islamic law, it is not permissible to stipulate a condition of acquittal in a leasing contract, in regard to defects of leased asset. This is because the lessor is bound to ensure that the usufruct of the asset can be enjoyed by the lessee.

Notwithstanding this, the lessor of course deserves rental income that is formulated by taking into consideration the expenses incurred in making the asset ready to be used by the lessee. This is unlike a contract of sale, in which it is permissible to stipulate an acquittal from any defect of the goods sold. This is because in a sale contract, both the possession and the benefits of the subject matter are transferred to the buyer.

(729) Does any *Shari'ah* issue arise from the following?

The Bank searches for Islamic investment and financing opportunities. It then studies those investments, gets the necessary information and agreements from the regulator, and subsequently, seeks the opinion of its Shariah Committee. After that, it negotiates with the relevant parties and engages the services of lawyers, for the purpose of formalizing the investment/financing agreements.

Out of ten opportunities, only one may finally be realized. For the one investment that is realized, the bank would agree with the company that wants sell this investment on a commission, which is between ½ - 3% of the total investment value.

Then, the bank will look for investors to be involved in this investment venture. A special *mudharabah* investment account will be created, in which the account will be managed by the Bank.

Ruling : If the Bank sold or bought something for itself (the Bank will gain from the transaction), then it is not permissible for it to take a commission on the transaction.

Alternative : However, if the Bank bought it for its customers or banks or for an investment portfolio that it manages, it is permissible for it to take commission on that, provided that the Bank is not the mudharib for that particular venture. This is because a mudharib is not allowed to benefit from a mudharabah in that manner (taking commission is akin to wages – mudharib is not one of the workers of the mudharabah). The efforts of the mudharib will be rewarded in the form of profit sharing with the rabbul mal (capital provider).

- (730)** 1. What is the Islamic ruling on the following? The Bank buys an asset from its owner. However, that asset is currently leased to another party (tenant) - either on normal leasing or hire purchase. The seller/owner will give his rights under the leasing contract to the Bank OR the Bank will appoint the same seller to collect the rental on behalf of the bank during the leasing period; and
2. Following the purchase, as mentioned in 1, is it permissible now for the Bank to agree with the tenant to cancel the earlier leasing contract between the former owner and the tenant, and enter into a new leasing contract between the Bank and the same tenant, with different conditions OR lease the asset to another party, if the tenant does not want to continue leasing the asset for whatever reason?

1. First part: It is permissible for the lessor (seller) to give his rights in the leasing contract to the Bank, so that the Bank would be able to assume the role as the new lessor. However, this must be done without increasing or decreasing the rental. In relation to this, although the asset has been leased to another party, the sale contract is valid and the tenant can remain in the real estate until the end of the leasing period, as he owns the usufruct during the said leasing period. In connection to this, the lessor owns the price of usufruct, which is the rental. However, if the rights remain with the lessor, the lessor can appoint the buyer (Bank) as an agent to collect the rental from the tenant. The Bank will subsequently deposit the rental into the seller's account or channel it to him; and

2. Second part: It is permissible for the Bank to agree with the tenant and the lessor (seller) to cancel the original leasing contract. Then, the Bank will formalize a new leasing contract with the first tenant or another party, where the rental can remain status quo or be increased/decreased; and with certain conditions that the parties agree upon. The lessor will give his rights in the leasing contract to the Bank.

(731) Can the following condition be included in a leasing contract?

The lessee is bound to pay compensation for cancellation of the contract, even if the cancellation is demanded by the lessor.

If the cancellation is demanded by the lessor, it is not permissible to force the lessee to pay compensation; even it is confined to actual damages, unless it is due to the lessee's contravention of conditions of the contract and agreement on how to use the leased asset. However, if the cancellation is demanded by the lessee, it is permissible for the lessor to obtain compensation, according to the actual damages.

(732) In a service leasing contract, is it permissible to continuously increase the wages of the worker (lessor), so that today's wages is more than yesterday's, provided it is agreed upon by the lessor and the lessee?

It is permissible to do so, as the increase is not due to delayed payments, but is stipulated in the contract. In connection to this matter, an agreement which accords an additional amount to the creditor, in case of delayed payments, is not permissible in Islamic law. This is because this constitutes interest that is in proportion to the time or period.

(733) As it is not permissible to stipulate in a leasing contract that the lessee must bear the cost of insurance, can the lessor then include the said cost in the fees and appoint the lessee as an agent, to buy the insurance policy on his behalf?

Yes, the cost of insurance can be included in the fees, to be agreed by both parties. Furthermore, nothing in Islamic law prevents the lessor from appointing the lessee as his agent, for the purpose of buying the insurance policy, provided that the cost is borne by the lessor and the policy is in benefit of the lessor.

It must be made known that all taxes and expenses that are related to an asset must be borne by the owner, which in this case, is the lessor. However, all the said expenses can be taken into consideration when formulating the final contractual fees.

(734) A group of Islamic banks collectively financed the development of a land which belongs to a client, under the contract of *istisna'*. After preparations have been done by the banks to

execute the transaction, it was repudiated by the client, on the grounds that he no longer needs the financing. The client then paid some monetary compensation to the Islamic banks. In this case, can the Islamic banks accept the compensation?

Yes, the banks can accept the compensation as it does not contravene any Shari'ah principles. The compensation is paid by the client to compensate the banks for the efforts expended and expenses incurred in preparing for the execution of the contract. In contrast to the penalty imposed on delayed payments, this compensation need not be spent for charitable purposes.

(735) Is it permissible for a Muslim who has a construction company to enter into a construction contract with a conventional bank, for the purpose of constructing a building for the said bank?

It is permissible for the contractor to perform construction work for the conventional bank, provided the construction job does not involve any ribawi element. This is because it is mentioned that the Prophet (Allah blesses him and gives him peace) dealt with the Jews, who are actively involved in riba. Take note, however, that the dealings of the Prophet (Allah blesses him and gives him peace) are not ribawi dealings, but are dealings that do not involve usury.

(736) A bank bought manufactured goods from a company. Then, the bank appoints the same company as their agent, to sell the goods, at a profit, to the customers of the bank, within a specific time period. Subsequently, the resulting profit of the sales was more than expected, which increased the profit earned by the bank. Pursuant to that, the agent demanded a portion of the additional profit obtained, because the company considers that the transaction of manufacturing with making the seller an agent is interest financing transaction from its part. So, can the agent demand the said amount?

Using LIBOR is resumption of assessment of the profit and transaction that mentioned (which is manufacturing with making the seller an agent to sell according to LIBOR), it is in fact a manufacturing transaction, and verily selling the goods has concluded in possession of the customer, so the profit is totally for him. It is not permissible to link the price of manufacturing with the cost of period of the time that is basically taking to specify the amount of the profit in debts and interest financing. This is because that will amount to changing the feature of a contract of manufacturing from being a sale that is permissible in Islam (by specific price) to a ribawi transaction.

(737) Is the following transaction permissible?

One of our customers entered into an agreement with a contractor to build a school on one of his lands. The contractor executed 10% of the construction work and consequently

received payment for the work done. So now, the customer wants the Bank to finance the remaining 90% of the construction work, through the following arrangement:

The Bank will purchase the completed part (10%) from the customer;

The Bank then leases it to the customer

For the remaining 90% of the construction work, the Bank will conclude a manufacturing contract with the customer; and

The Bank will conclude a manufacturing contract with the first contractor.

Apart from that, in a manufacturing contract, is it permissible for the customer to pay a portion of the value of the project during the period of establishment of the project?

It is permissible for the Bank to purchase the completed part (10%) from the customer, in which case the Bank becomes the partner of the customer. In relation to that, it is compulsory to appraise both the value of the land and the value of the construction project, in order to determine the Bank's share.

For example, if the price of the part that has been completed is 10,000 dinar and the combined value of the land and the construction project is 200,000 dinar, then the Bank's share in that partnership is 5% ($10,000/200,000$) of the total value of the project (including the cost of land).

It is compulsory to mention the Bank's share in the project, based on the contract of sale for the customer after the construction has been completed, in order to know the asset that is sold, as it is permissible for the Bank after completing the construction to sell its part to the customer at the price that agreed upon between them.

It is also permissible for the Bank to be involved in a contract of manufacturing with the customer for the remaining 90% of the construction work, with an obligation to provide a comprehensive statement on the part that will be completed.

It is also permissible for the Bank to consider costs of completion of the project as part of its share in the project, i.e. in addition to the 5% share. The Bank can also demand the costs from the customer. It is also permissible for the Bank to conclude a construction contract with another contractor and not necessarily with the original contractor.

In case the Bank wants to demand payment for the completion of the construction contract, it is permissible for it to demand payment on the spot or on deferred instalment basis, depending on the agreement between both parties.

However, it is not permissible for the Bank to be involved in a contract of hire purchase with the customer to lease the part of the project that has yet to be completed, if the tenant cannot benefit from the leased asset and the benefit cannot be realized until the school is fully completed, and the tenant is sure that he is going to benefit from the leased asset.

(738) Is it possible to conclude a manufacturing contract to formalize an arrangement, whereby the Bank acts as an intermediary between the customer and the manufacturer?

In Islamic law, nothing prevents the Bank from concluding a contract of manufacturing between themselves and the customer, and concluding another contract of manufacturing (parallel manufacturing) between themselves and the constructor or actual manufacturer, or vice versa.

So, firstly, the Bank concludes a contract with the actual manufacturer. Then, the second contract is concluded with the customer, according to what the bank sees is suitable. The two contracts are separate contracts. Hence, there will be a contractual relationship between the Bank and the manufacturer (1st contract) and a contractual relationship between the Bank and the customer (2nd contract).

It is obvious from this that in a parallel manufacturing contract, there are three parties. One of them is the Bank, which is involved in two separate manufacturing contracts, in different capacities. In the first contract, the Bank enters the contract as a *mustasni'an* (customer). In the second contract, the Bank enters the contract as a manufacturer. The conditions for the two contracts are same, except in the price (in the second contract, it includes a margin for the Bank), period of delivery, and receipt and delivery for the Bank.

It is also permissible for the Bank to appoint the customer as their agent, to receive/take possession of the manufactured asset on their behalf. If there are guarantees of maintenance of manufactured asset for a specific period that the Bank has obtained from the manufacturer, it is permissible for the Bank to transfer it to the customer.

However, the Bank is still responsible if the manufacturer does not perform his duties, as agreed. This is because the Bank entered into the second contract while assuming the role of a manufacturer. Thus, the Bank is responsible for defects and cannot acquit themselves from it.

(739) Why is deferred payment allowed in *istisna'*?

This is because *istisna'* is a contract for the manufacturing of products. We can also draw a parallel between *istisna'* and *ijarah*, due to their similarities. To further elucidate on this matter, consider the fact that an *ijarah* contract can be utilized to hire the services of a person to perform a particular task. Compare this with the contract of *istisna'*, whereby a manufacturer is

contracted/hired to manufacture something for the buyer. Thus, the buyer in an *istisna'* contract is comparable to the lessee in an *ijarah* contract. On the other hand, the manufacturer (*istisna'*) is comparable to the lessor (*ijarah*). Hence, in *istisna'*, deferred or instalment payments are allowed, as it is allowed in an *ijarah* contract.

(740) In a manufacturing arrangement, is it possible to give an incentive to the manufacturer, so that the manufacturing process will be expedited? In other words, the contractual price will be connected to the period of execution. For example, if the manufacturer takes one month to manufacture the said product, the price would be 150. However, if the manufacturer takes two months to do it (i.e. takes a longer time), then the price (compensation received by the manufacturer) will be reduced to 100?

According to the scholars, in Islamic law, it is permissible to adjust the price of the subject matter of a leasing contract, during the leasing period. As leasing is alike a manufacturing (the customer **hires** the manufacturer to produce something for him), the permissibility of adjusting the contractual price also applies to a manufacturing contract.

Other related conditions are as follows:

If the manufacturer delayed in manufacturing the subject matter, the customer can charge a conditional penalty. This is permissible, because this is a delay with regard to performance of obligations and not a delay with regard to the payment debt;

Early execution, by granting incentive, which can be adjusted; and

In the event that the manufacturer fails to execute their contractual obligations, the price of the subject matter will be adjusted back to the original price. If the delay caused a penalty to be charged upon the manufacturer, the excess amount must be expended for the benefit of charity.

(741) As one of the Bank's customers bought goods from the Bank on deferred basis, the Bank now wants the client to give a form of security for the debt. So, is it permissible for the Bank to accept an LG that was issued by a conventional bank?

Ruling : It is permissible for the customer to give an LG to the Bank, in order to secure the Bank's rights, regardless of the origin of the LG, i.e. whether it is issued by an Islamic or conventional bank.

Rationale : An LG constitutes a guarantee (*kafalah*) of risk from the issuer of the said LG. The issuer's status (e.g. whether Islamic or not) **does not affect the validity of the guarantee (*kafalah*)** and its implementation. When the Bank accepts an LG from a conventional bank that deals with *riba*, it **does not mean** that the Bank participates in *ribawi* activities. It only

means that the Bank is making an effort to secure the amount that is due to them from the customer, in the event of default.

(742) Is it permissible for a bank to take commission on the guarantee letters that it issues to its customers, in order to facilitate their customers' transactions with the authorities that require them to give guarantee letters?

It is not permissible for a bank to charge a commission on guarantee letters that is attributed to a period of investment or its value, in proportion to the guarantee. However, it is permissible for a bank to charge a fee that is in line with the **actual expenses** incurred in issuing the guarantee letters.

Nevertheless, it is impermissible for a bank to charge a fee that is dependent on the categories and services that are necessary to issue the letters, such as level of approval that is required or services of procedures that is needed for the issuance of such letters. It is also permissible to issue a guarantee letter for a specific period of time and renew the LG by way of renewal fees.

(743) Is it permissible for a broker to guarantee the payments due from the buyer to the seller?

After studying the views of scholars in regard to brokerage, there are different views with respect to its nature, i.e. whether it is an agency or leasing or *ji'alah* (unilateral promise to give a reward to anybody who performs a particular task). The Council has chosen the view that a brokerage deal is akin to leasing and that the broker is a worker that shares the responsibilities/work of the particular transaction.

In this respect, the guarantee given by the broker is permissible, based on the view that the Council preferred. So, verily, it is permissible for the broker to guarantee the buyer if the role of broker is **confined to that of an intermediary** between the buyer and seller, without being a signatory of the contracts involved or demanding the rights of the said contracts.

(744) Is it permissible to charge a fee on the issuance of LGs, based on the value of the guarantee and its period; thus, charging fees for the advice given and the feasibility study done for the customer?

Ruling : It is not permissible to charge a fee that is based on the value of the guarantee and its period.

Alternative : The Bank can charge a fee that is based on the **actual services** rendered to the customer, such as the arrangement for a research to be done and for advisory services. The fee must correspond to the **normal fee that is charged for those types of services**. It is also permissible to charge a fee for the documentation services (can only be charged once).

(745) As we know, it is not permissible to take commission on the issuance of LGs. So, is it permissible for a bank to accept a guarantee from a customer that had obtained an LG by way of paying a commission to the guaranteeing bank?

There is no prevention in Islamic law from accepting such an LG. This is because there is no relationship between the bank and the issuance of the LG or the methods employed by the customer to obtain it.

(746) A bank concluded a transaction that was guaranteed by one of its customers. Subsequently, the said customer (guarantor) dies. So, what is the status of the guarantee from the Islamic point of view?

The guarantee is still in force, although the guarantor has died. However, the period of the debt that was guaranteed will be terminated and the debt will be recovered from estate of the deceased. In relation to this, the inheritance will not be divided until the debt has been settled. In consequence to that, the heirs can only demand the amount paid from the principal debtor upon the maturity of the debt period.

(747) A group of Islamic banks collectively financed the development of a land which belongs to a client, under the contract of *istisna'*. After preparations have been done by the banks to execute the transaction, it was repudiated by the client, on the grounds that he no longer needs the financing. The client then paid some monetary compensation to the Islamic banks. In this case, can the Islamic banks accept the compensation?

Yes, the banks can accept the compensation as it does not contravene any Shari'ah principles. The compensation is paid by the client to compensate the banks for the efforts expended and expenses incurred in preparing for the execution of the contract. In contrast to the penalty imposed on delayed payments, this compensation need not be spent for charitable purposes.

(748) Is it permissible for a Muslim who has a construction company to enter into a construction contract with a conventional bank, for the purpose of constructing a building for the said bank?

It is permissible for the contractor to perform construction work for the conventional bank, provided the construction job does not involve any ribawi element. This is because it is mentioned that the Prophet (Allah blesses him and gives him peace) dealt with the Jews, who are actively involved in riba. Take note, however, that the dealings of the Prophet (Allah blesses him and gives him peace) are not ribawi dealings, but are dealings that do not involve usury.

(749) A bank bought manufactured goods from a company. Then, the bank appoints the same company as their agent, to sell the goods, at a profit, to the customers of the bank, within a specific time period. Subsequently, the resulting profit of the sales was more than expected, which increased the profit earned by the bank. Pursuant to that, the agent demanded a portion of the additional profit obtained, because the company considers that the transaction of manufacturing with making the seller an agent is interest financing transaction from its part. So, can the agent demand the said amount?

Using LIBOR is resumption of assessment of the profit and transaction that mentioned (which is manufacturing with making the seller an agent to sell according to LIBOR), it is in fact a manufacturing transaction, and verily selling the goods has concluded in possession of the customer, so the profit is totally for him. It is not permissible to link the price of manufacturing with the cost of period of the time that is basically taking to specify the amount of the profit in debts and interest financing. This is because that will amount to changing the feature of a contract of manufacturing from being a sale that is permissible in Islam (by specific price) to a ribawi transaction.

(750) Is the following transaction permissible?

One of our customers entered into an agreement with a contractor to build a school on one of his lands. The contractor executed 10% of the construction work and consequently received payment for the work done.

So now, the customer wants the Bank to finance the remaining 90% of the construction work, through the following arrangement:

The Bank will purchase the completed part (10%) from the customer;

The Bank then leases it to the customer

For the remaining 90% of the construction work, the Bank will conclude a manufacturing contract with the customer; and

The Bank will conclude a manufacturing contract with the first contractor.

Apart from that, in a manufacturing contract, is it permissible for the customer to pay a portion of the value of the project during the period of establishment of the project?

It is permissible for the Bank to purchase the completed part (10%) from the customer, in which case the Bank becomes the partner of the customer. In relation to that, it is compulsory to appraise both the value of the land and the value of the construction project, in order to determine the Bank's share.

For example, if the price of the part that has been completed is 10,000 dinar and the combined value of the land and the construction project is 200,000 dinar, then the Bank's share in that partnership is 5% ($10,000/200,000$) of the total value of the project (including the cost of land).

It is compulsory to mention the Bank's share in the project, based on the contract of sale for the customer after the construction has been completed, in order to know the asset that is sold, as it is permissible for the Bank after completing the construction to sell its part to the customer at the price that agreed upon between them.

It is also permissible for the Bank to be involved in a contract of manufacturing with the customer for the remaining 90% of the construction work, with an obligation to provide a comprehensive statement on the part that will be completed.

It is also permissible for the Bank to consider costs of completion of the project as part of its share in the project, i.e. in addition to the 5% share. The Bank can also demand the costs from the customer. It is also permissible for the Bank to conclude a construction contract with another contractor and not necessarily with the original contractor.

In case the Bank wants to demand payment for the completion of the construction contract, it is permissible for it to demand payment on the spot or on deferred instalment basis, depending on the agreement between both parties.

However, it is not permissible for the Bank to be involved in a contract of hire purchase with the customer to lease the part of the project that has yet to be completed, if the tenant cannot benefit from the leased asset and the benefit cannot be realized until the school is fully completed, and the tenant is sure that he is going to benefit from the leased asset.

(751) Is it possible to conclude a manufacturing contract to formalize an arrangement, whereby the Bank acts as an intermediary between the customer and the manufacturer?

In Islamic law, nothing prevents the Bank from concluding a contract of manufacturing between themselves and the customer, and concluding another contract of manufacturing (parallel manufacturing) between themselves and the constructor or actual manufacturer, or vice versa.

So, firstly, the Bank concludes a contract with the actual manufacturer. Then, the second contract is concluded with the customer, according to what the bank sees is suitable. The two contracts are separate contracts. Hence, there will be a contractual relationship

between the Bank and the manufacturer (1st contract) and a contractual relationship between the Bank and the customer (2nd contract).

It is obvious from this that in a parallel manufacturing contract, there are three parties. One of them is the Bank, which is involved in two separate manufacturing contracts, in different capacities. In the first contract, the Bank enters the contract as a *mustasni'an* (customer). In the second contract, the Bank enters the contract as a manufacturer. The conditions for the two contracts are same, except in the price (in the second contract, it includes a margin for the Bank), period of delivery, and receipt and delivery for the Bank.

It is also permissible for the Bank to appoint the customer as their agent, to receive/take possession of the manufactured asset on their behalf. If there are guarantees of maintenance of manufactured asset for a specific period that the Bank has obtained from the manufacturer, it is permissible for the Bank to transfer it to the customer.

However, the Bank is still responsible if the manufacturer does not perform his duties, as agreed. This is because the Bank entered into the second contract while assuming the role of a manufacturer. Thus, the Bank is responsible for defects and cannot acquit themselves from it.

(752) Can a bank be the intermediary in a parallel manufacturing contract, whereby the customer had already concluded a manufacturing contract with the contractor?

Banks are not permitted to do so, until the initial contract is rescinded and a fresh contract is concluded, i.e. contract between the bank and the customer (contract 1), and after that, a contract between the bank and the contractor (contract 2). This does not constitute a transfer of the previous contract. This new parallel contract can be concluded by having an agreement between the three parties. So, implicitly, it cancels the initial contract.

(753) As one of the Bank's customers bought goods from the Bank on deferred basis, the Bank now wants the client to give a form of security for the debt. So, is it permissible for the Bank to accept an LG that was issued by a conventional bank?

Ruling : It is permissible for the customer to give an LG to the Bank, in order to secure the Bank's rights, regardless of the origin of the LG, i.e. whether it is issued by an Islamic or conventional bank.

Rationale : An LG constitutes a guarantee (*kafalah*) of risk from the issuer of the said LG. The issuer's status (e.g. whether Islamic or not) **does not affect the validity of the guarantee (*kafalah*)** and its implementation. When the Bank accepts an LG from a conventional bank that deals with *riba*, it **does not mean** that the Bank participates in *ribawi* activities. It only means that the Bank is making an effort to secure the amount that is due to them from the customer, in the event of default.

(754) Is it permissible for a bank to charge commission for issuing a documentary letter of credit to a customer, in case of its opening for procedure murabahah with the ordered customer, to open the documentary letter of credit which is not fully covered?

It is not permissible for the bank to charge commission for issuing a murabahah documentary letter of credit, as it is opening documentary letter of credit for itself. However, it is permissible for the bank at procedure murabahah contract with the customer to add the expenses of the documentary letter of credit to the cost of the credit in place of murabahah. Allah knows best.

(755) Is it permissible for a bank to charge commission on documentary letter of credit, in case of it opens for purchasing asset that the bank will lease to the customer based on hire purchase, if the documentary letter of credit is not fully covered?

It is not permissible to charge commission on the customer of documentary letter of credit for purchasing asset that the bank will lease to the customer, based on hire purchase. This is because the documentary letter of credit is open in benefit on the bank. However, the bank can consider this commission in the component of the rent that is agreed upon with the customer. Allah knows best.

(756) In their haste purchase certain products, some customers do not confirm their capability to cover the amount granted in the documentary letter of credit (LC). The customers' inability to repay will then cause them to request for financing from the Bank. What can the Bank do to accommodate to this kind of situation?

The Council suggests that if in the first place, the customers have doubts over their capability to cover the amount granted in the documentary letter of credit, they should then enter into a *murabahah* contract with the Bank, rather than requesting for an LC. In the event that they are able to settle the price earlier than the stipulated time, the Bank can then give a rebate to them. However, the rebate must not be pre-agreed.

Another remedy is for the Bank to conclude a partnership agreement with the customers, by purchasing a portion of the goods (even if it is up to 90%), while applying the rules of partnership, such as the burden of risk and profit and loss sharing. Allah Knows best.

(757) If a customer without adequate funds wants to obtain an LC, what are the Shari'ah-compliant methods that can be used to accommodate his request?

By way of *murabahah*, i.e. on the basis that the Bank will buy the specified goods for their own benefit. In this case, the Bank is considered as the party who obtained the LC. Subsequently, upon the Bank owning and possessing the goods, the customer would apply for an LC. Then, the goods would be sold to the customer on deferred terms;

By way of *musharakah*, i.e. on the basis that the Bank that obtains the LC would purchase the goods identified. Both the customer and the Bank would jointly own the said goods. The bank will then sell its share of the goods to the customer on deferred terms. Allah Knows best.

(758) The Bank issues LCs to customers and charges commission on the issuance or confirmation of the LCs. Is this permissible? What would the ruling be if the LCs are related to *murabahah* transactions entered into by the Bank?

It is permissible for the Bank to charge commission on the issuance of LCs, in the form of percentage of an amount for a specific period, as long as the commission is on issuance only and the LCs are fully covered by the said customers;

If the commission of services of the LCs are withdrawn on the basis of specific period of time, and the matter of the fact amounts to extend this period and the bank is still giving these services to the customer, so the period is considered as being extended automatically and it is permissible for the Bank to accept remuneration, in proportion to the time extension; and

It is permissible for the Bank to charge commission on confirmation of the LCs that were issued by another bank, on condition that the commission will be withdrawn on the basis of actual wages on issuance only, and it will deal as the transaction is on issuing letter of guarantee, regardless the period or the amount, so that the wages will not be in proportion to the guarantee. Allah Knows best.

(759) In a *mudharabah* contract, is it permissible to stipulate that if the profit earned by the *mudharabah* venture exceeds a certain amount, the excess will be given to the *mudharib*?

It is permissible to do so, provided that the *mudharib* and the *rabbulmal* have already received their share of the profit (i.e. for profit below the specified amount). On the other hand, it is also permissible for the excess to be shared between both parties, according to an agreed profit sharing ratio.

(760) Is it permissible for the Bank to conclude a *mudharabah* agreement, whereby the profit to be earned by the capital provider will be benchmarked against LIBOR?

Yes, it is permissible to specify a percentage of the profit for the capital provider, by way of benchmarking against LIBOR, on the same amount and period. Additional percentage points (on top of LIBOR) will be given to the *mudharib*. However, it must be mentioned that this is the **expected** profit and not the confirmed profit to be earned by parties to the contract.

Apart from that, at the conclusion of the *mudharabah* contract, the profit sharing percentage that is known to all parties must be specified, and it is not permissible to quantify the profit by a specific amount or specific proportion from the capital of the *mudharabah*, e.g. 3% from the capital, and the additional amount belongs to the *mudharib*.

(761) It is known that a mudharib does not guarantee the capital of a mudharabah, unless it (the erosion of capital) is due to his negligence and violations, except that changing intentions and obligations (bad intentions) of some mudharib, and protection of money of the bank from deceits and non-fulfillment of obligations. Thus, to protect the capital providers and to urge the mudharib to make efforts in saving money and developing it. So, is it permissible for mudharib to guarantee the money and its fine, if its done voluntarily, even though originally, the capital is given to the mudharib for safekeeping?

Verily, it was mentioned in the book (i'adÉd al-manhaj lil istifÉdah min al-manhaji fÊ qawÉ'd al-fiqh al-mÉlik li al-sheikh / AÍmad al-shanqÊÏÏ p161 the opinion of ibn BÉz- one of mÉlik scholars, as follows:

1. Question - If a mudharib voluntarily agrees to guarantee the mudharabah capital, is he bound by his agreement?; and
2. Answer - If the mudharib is bound by the guarantee voluntarily after he starts the project, then he is obliged to perform as per the agreement.

The scholars have agreed that a mudharib cannot guarantee the capital of a mudharabah arrangement, unless it is due his negligence and violations. If the venture does not work out, the mudharib incurs the loss in the form of wasted efforts. Conversely, the monetary loss is borne by the rabbul mal or capital provider.

Hence, it is not permissible to stipulate a clause, whereby the mudharib guarantees the capital of the venture, even though there is no negligence and violation on his part. This is because a mudharabah is based on risk, and profit and loss sharing. The opinion that permits voluntary guarantee of capital by the mudharib is a weak one.

Nevertheless, it is permissible for a third party to guarantee the capital of the mudharabah, and the guarantee by the mudharib is done on the basis of donation and hibah (gift); this

donation will be distributed according to the losses incurred. The guarantee can be in the form of banking guarantee or personal guarantee or any guarantees that the capital provider accepts. Furthermore, the guarantee should not be mentioned in the contract, but effected in a separate arrangement, and does not originate from the mudharib.

(762) Is it permissible for the capital provider to stipulate on the entrepreneur to not sell, except on the spot and if he sells on deferred terms, he has to guarantee (the payment from) the buyers? This is done in order to prevent him from selling products on deferred terms to those without adequate financial capacity.

Yes, it is permissible for the capital provider to stipulate such a condition.

(763) Is it permissible for the capital provider (rabbulmal) to demand the entrepreneur/contractor (mudharib) to pay him a specific percentage of the value of the construction contract (in addition to the capital amount), regardless of the fact whether the project is profitable or not?

It is not permissible to do so because in a mudharabah contract, it is not the responsibility of the mudharib to guarantee the capital or the returns. In the event of a loss, the rabbulmal will bear all the losses, unless the losses are due to the mudharib's negligence or violation of the contract.

(764) Let's say we have signed a contract with a contractor. Then, a new regulation is enacted by the authorities. In this case, who will bear the additional costs that have to be expended, as a result of the new regulation?

The Bank can include a stipulation in the contract, whereby the owner must bear additional costs that arise as a result of new laws and regulations.

(765) A customer obtained financing from Kuwait Finance House to buy a land on deferred installment payments. Under the land financing contract, the land is registered under Kuwait Finance House's name, i.e. as a pawn. Subsequently, the said customer signed an agreement with a contractor, for the latter to construct a building on the abovementioned land, at the cost of 800,000 Kuwaiti Dinars. Pursuant to the signing of the construction agreement, the contractor commenced construction work on the land, although no money has been paid by the customer. Now, the customer is requesting us to finance the construction project and supervise it, to ensure that the intended building is constructed according to the agreed specifications. As consideration for the actions on our part, we are in a position to determine the pricing for this project. In terms of payment, upon signing the

contract, the customer will pay 25% of the total project budget and the remaining will be paid on deferred installment basis. What is the Shari'ah ruling on this?

In the case where the defaulted owner fails to follow-up on his contract with the contractor, it will conclude as follows:

The agreement with the contractor will be terminated and the owner is responsible for payments due to the contractor;

A new contract will be concluded, with the purpose of completing the project. Kuwait Finance House is not bound to assist the contractor, but is responsible to execute the project in any way that they can. To achieve this, it is permissible for Kuwait Finance House engage another contractor. The agreements are totally independent of each other. The Committee recommends that all means to ensure the rights of Kuwait Finance House be taken by confirming from the conformity of the owner and his capability of payment at the period, as well as taking enough guarantees to fulfil Kuwait Finance House's rights.

(766) Some owners of lands come to us, requesting us to erect buildings on their lands, which they fully own or which they have purchased on deferred payment. The request is that we should undertake all the construction expenses, including the expenses to execute the project, agreement with the building contractor and supervising the execution of the project, in accordance with the required specifications. Thereafter, the bank takes delivery of the building after its completion and then delivers it to the owner of the land. This is done on an agreement between us and the owner, on an agreed price, out of which 25% is paid in advance, before the beginning of the project, while the balance would be paid by monthly or yearly installments. In some occasions, the installment payments will only commence three years after the contract is signed. What is the Shari'ah point of view of this contract?

It is permissible for Kuwait Finance House to enter into a contract to erect a building for a customer on a land that is owned by the customer, after agreeing on the amount of deposit and instalments to be paid by the said customer. Kuwait Finance House is permitted to employ whomever it wishes and appoint the necessary subcontractors.

However, each of the contracts is subject to its own stipulations. This is regarded as an istisna contract, and there is nothing in Shari'ah that prevents its payment be deferred or made on instalments. The Council however, recommends that all the necessary procedures be taken, in order to safeguard the rights of Kuwait Finance House.

(767) Is it permissible in Islamic law for Kuwait Finance House to enter into a partnership arrangement with a trader, with the purpose of importing specific goods and subsequently selling it?

Additional conditions:

The trader will manage the partnership and bear the related management expenses;

The trader will market the goods and bear the storage and marketing expenses; and

Because of condition 1 and 2, 25% of the net profit generated will be appropriated to the trader **prior** to it being distributed to the partners (net profit – 25% of net profit = A; A will be shared between the trader and Kuwait Finance House, according to their profit sharing ratio).

Storage expenses, custom fees, expenses incurred in loading and discharging the goods and all related expenses must be borne by the partnership and not individual partners. Furthermore, the expenses cannot be deducted as a portion of the net profit. However, with regard to the above case, where the trader manages the partnership and markets the goods, it is permissible for both partners to agree that a specific amount be paid to the trader, in proportion to the work done. Alternatively, the portion of net profit allocated to the trader can be increased.

(768) Can two persons agree to buy a commodity, to be jointly owned by the both of them, on the basis that, one of them will promise the other to purchase the share of his partner at a price higher than the cost price, on deferred payment basis?

The answer to this question contains two aspects. The first is the permissibility of this act from the Shari'ah point of view, while the second aspect is whether this promise is binding or not. For the first aspect, there is no ambiguity on the permissibility of this promise from the Shari'ah point of view. This is because Muslims are bound by their stipulations, except a stipulation that makes that which is haram (unlawful) to be halal (lawful) or that which is halal (lawful) to be haram (unlawful).

As for the second aspect, we have already preferred to give fatwas in line with the opinion reported from Imam Malik, that says, "If an obligation is established on the basis of a promise in such that, if not for the promise, that obligation would not have been established, then this type of promise becomes binding. Nevertheless, it is compulsory to take into account all the necessary things that would make this act understood, by defining its objectives and explaining the terms clearly, with regard to the tenure, price and the any other elements that will prevent disputes between the parties. To me, this is the answer to those questions. Allah knows best.

(769) Is it permissible in Islamic law for Kuwait Finance House to enter into a partnership arrangement with a trader, with the purpose of importing specific goods and subsequently

selling it? Additional conditions: The trader will manage the partnership and bear the related management expenses; The trader will market the goods and bear the storage and marketing expenses; and Because of condition 1 and 2, 25% of the net profit generated will be appropriated to the trader **prior** to it being distributed to the partners (net profit – 25% of net profit = A; A will be shared between the trader and Kuwait Finance House, according to their profit sharing ratio).

Storage expenses, custom fees, expenses incurred in loading and discharging the goods and all related expenses must be borne by the partnership and not individual partners. Furthermore, the expenses cannot be deducted as a portion of the net profit. However, with regard to the above case, where the trader manages the partnership and markets the goods, it is permissible for both partners to agree that a specific amount be paid to the trader, in proportion to the work done. Alternatively, the portion of net profit allocated to the trader can be increased.

(770) In a partnership business, it is common practice for the cost of distribution and storing to be calculated as a proportion/percentage of the partnership's capital. Is this permissible in Islam? For example: Imported goods amounted to 100,000 dinars, distribution expenses is 1%, transportation expenses is 1% and storage and marketing expenses is 1%. Can those amounts be added to the expenses of the goods in the partnership?

It is not permissible to determine the expenses based on a certain percentage of the capital. The related expenses must be calculated based on what is normally incurred by a similar business at that time. The percentage that is based on presumption, which did not actually apply to the principal amount, cannot be used.

(771) What is the Resolution No. 136 (15/2) 2004, Issued By The International Council Of Fiqh Academy, Regarding Al-musharakah Al-mutanaqisah And Its Shari'ah Rules?

The International Council of Fiqh Academy, which is an offshoot of the Organization of Islamic Conferences (OIC), organized its 15th session in Masqat, Oman, from 14 – 19 Al-muharram 1425AH, which corresponds to 6 – 11 March 2004. After reviewing the research papers that were presented to the Council with regard to musharakatu mutanaqisah and its Shari'ah rules, and after listening to the discussions that revolved around it; resolved the following:

1. Musharakah al-mutanaqisah is a new invented transaction that consists of a partnership between two parties in a project that has a potential to generate income. In this contract, one of the partners promises to gradually purchase the shares of the other partner. It is immaterial whether the purchase was made using the income earned by the purchasing partner from the said project or income derived from other sources;

2. The basis of the formation of a musharakah mutanaqisah contract: It is a contract that is concluded by two parties, where each of them contributes capital to the partnership, either in the form of cash or kinds (kinds - after valuation has been done). The profit sharing ratio must be agreed upon by both parties, while the losses are borne on a pro rata basis, i.e. in accordance to the shares of each partner;

3. Musharakah mutanaqisah is featured with the existence of a binding promise on only one of the partners, i.e. he will buy the shares of the other partner, on the basis that the selling partner will have the option of whether to sell or not to sell. This is done by concluding contracts of sale upon the purchasing partner buying each part of the selling partner's shares (the contracts of sale can be concluded using whatever methods that indicate offer and acceptance);

4. It is permissible for one of the partners to rent the share of the other partner at a certain rental amount for a specified period, while each party is still responsible for the major maintenance (if the musharakah mutanaqisah contract involves the sharing of an asset, e.g. house), in proportion to each party's share;

5. Musharakah mutanaqisah is permissible, if the general laws of partnership are observed and the following rules are taken into consideration:

a. Non-existence of undertaking for either of the partners to purchase the shares of the other partner at cost price, i.e. the price of the shares at inception. This is because doing so will mean that a party is guaranteeing the share of his partner. Conversely, the price of the shares ought to be based on the market price on the day of the sale or based on a price that is agreed upon by both partners, at the time of sale;

b. Non-existence of a stipulation for one of the partners to bear the entire insurance or maintenance expenses. The expenses should instead be borne in proportion to each partner's shares;

c. Profit should be distributed based on the profit sharing ratio. No party is allowed to stipulate a specific amount from the profits or a percentage from the amount of his capital contribution;

d. Detailing the contracts and obligations involved in the musharakah mutanaqisah transaction; and

e. There should be no stipulation to prevent either of the partners to withdraw his contribution (funding). Allah Knows best.

(772) What is the resolution on the qardh hasan?

The use of *qardh hasan* in a correct manner and acceptable by the *Shari'ah*, would definitely benefit contracting parties. However, if it is inappropriately used, it would

potentially create problems, which may tarnish the image of the Islamic financial system. Among the issues that may arise are:

1. Whether *qardh hasan*, in its true meaning, implies the need to be repaid or otherwise; and
2. Since Islamic banking institutions offer financing by utilizing customers' deposits who expect returns, the use of *qardh hasan* as a mode of financing is deemed to be inappropriate. This is because *qardh hasan* is not meant to generate profit, rather it is benevolent or *tabarru`at* by nature.

Resolution

The Council, in its 51st meeting, held on 28th July 2005 / 21st Jamadil Akhir 1426, resolved that the word '*hasan*' should be taken out after the word '*qardh*', implying that *qardh* is an obligation for borrowers to repay their loan to lenders.

(773) Is it permissible for me to borrow one thousand dinar from someone, for period of one year, on condition that the same person will borrow three thousand dinar from me, for a period of one year?

Yes

(774) What is the ruling on the following situation? A customer who has an investment deposit account with Kuwait Finance House wants to buy an asset from Kuwait Finance House. He would like to buy on deferred instalment basis, with his account as pawn.

It is permissible because the investment deposit account represents part of the asset's selling price and investment, and pawning the real asset is permissible.

(775) A customer who has a deposit in a bank issued a letter, saying that the money deposited is pawned for my benefit. Is it permissible for me to accept it, even though the deposit is made with a conventional bank?

It is permissible to accept the deposit. In this case, the depositor and not you are responsible for the state of the funds. This is concluded by way of analogy of the dealings of the Prophet (Allah blesses him and gives him peace) with the Jews.

(776) Before the Shari'ah Committee issued a ruling that prohibits the act of pawning an asset for the benefit of a conventional bank, Kuwait Finance House had already done so, based on

previous arrangements. Now that it is prohibited, what is the *Shari'ah's* view on the transactions that have been concluded prior to the resolution of the Shari'ah Committee?

The benefits of an asset are part of the asset and cannot be separated from it. According to the law, albeit the conventional law, the pawnbroker has the right to demand it. So, Kuwait finance House is obliged to complete the procedures of pawning the bonus shares. This is because, as mentioned earlier, the benefits of an asset are part of the asset and cannot be separated from it. However, Kuwait Finance House must always ensure that their rights are protected.

(777) Is it permissible for Kuwait Finance House to reserve an amount from the current account of a customer, that tantamount to his debt on behalf of the customer or as agent for the debt of another person?

Reply to the first part of the question: It is permissible to reserve an amount from the current account of the customer for debt owing to Kuwait Finance House, and this can be considered as payment for the debt, i.e. by way of clearance. The ruling for the second part of the question is also of permissibility, and that can be considered as payment of the debt, on behalf of the debtor and at the same time, it implies for Kuwait Finance House as an agent for the customer in payment of the debt, if there is permission from the customer so that Kuwait Finance House can return to him to refund what has paid on his behalf.

(778) In a forward sale, is it permissible to sell the asset before it is in the possession of the forward seller? If it is not permissible, is it permissible for the forward seller (*rab-al salam*) to sell forward something that he will receive in another forward sale, although the former and the latter forward sale contracts are not connected?

It is not permissible for a forward seller to sell the asset of a forward sale contract (*al musalam fihi*), before he takes possession of the said asset. However, it is permissible for the forward seller (*rab-al-salam*) to sell an asset that he will receive in another forward sale, although the former and the latter forward sale is not connected.

As for the parallel salam contract, it can only be used in cases of necessities, and not as a trading instrument. This is because the permissibility of salam is by way of exception of the general principles.

Notwithstanding that, if it is found that by using salam as a trading instrument, there are much benefits to be obtained by the Muslim community and there is no element of injustice, then it is permissible to use it, provided that prior to Éimplementation, it is assessed and approved by the Fatwa Council and the Shari'ah Advisory Council.

(779) The management asked about forward sale, and to what extent is it permissible to sell the item of *salam* before its possession, particularly if during the waiting period (before possession takes place), the circumstances change, such as the price of the *salam* subject matter decreases?

It is not permissible to sell the item of *salam* before its possession. However, to mitigate the risk posed by changes in circumstances, the solution is to take a binding promise from the buyer, as in the case of promise to buy in mark-up sale (*murabahah*).

(780) A buys forward, at a fixed price, one hundred tonnes of grains in January 1985 and is due to receive it in May 1985. Then, two months before the delivery date, i.e. in March 1985, another person, B offered to be A's partner for the forward sale that A had contracted in. Is it permissible for B to be A's partner for this contract, either based on the same value that A has paid from the principal amount, or more or less?

It is not permissible to sell the item of *salam* before its possession.

(781) A buys forward, at a fixed price, one hundred tonnes of grains in January 1985 and is due to receive it in May 1985. Then, two months before the delivery date, i.e. in March 1985, another person, B offered to be A's partner for the forward sale that A had contracted in. Is it permissible for B to be A's partner for this contract, either based on the same value that A has paid from the principal amount, or more or less?

It is not permissible to sell the item of *salam* before its possession.

(782) In a forward sale agreement, is it permissible to specify the price of the asset according to the market price? But, what if the market price decreases? Can the price be determined based on the price on the date of delivery? Is it compulsory to specify the price, upon conclusion of the contract?

In a forward sale, as the contract is concluded, it is compulsory for the contracting parties to specify the price. The price can be based on the current market price but not the future price, i.e. the expected price.

(783) Is it permissible for us to transfer the balances of certain current accounts to savings accounts, with the purpose of investing those balances?

Before doing so, it is compulsory to get the agreement of the said depositors because such a transfer will expose their deposits to a multitude of risks, as opposed to a current account, where the amount deposited is guaranteed by Kuwait Finance House.

(784) Is it permissible for me to make someone an agent, to sell on my behalf a group of goods for different persons, with the following conditions?

1. There is a minimum selling price that must be complied with by the agent. He cannot sell below that price;
2. There is a maximum credit period. The agent must collect the full amount from the buyer within the credit period; and
3. The agent is responsible to ensure that all debts are collected from the buyers, which are then paid to me, as the principal

It is permissible for the principal to stipulate conditions that are restrictive, in terms of time, place, work, measure and period, as well as any other stipulations that the principal and the agent can agree upon. It is the duty of the agent to do his best in fulfilling the rights of the principal.

(785) During the purchase transaction, is it necessary for the agent to mention to the seller that he is an agent of Kuwait Finance House?

No, it is not necessary to do so. However, it is better if he notifies the seller of the fact, for disciplinary of the transaction and specification of final source to execute the contract.

(786) Is it permissible for us to appoint a certain entity as an agent to buy some goods for us (on the spot) and subsequently, the agent would sell the goods to themselves, on deferred terms?

The question consists of two parts:

1. The first part is permissible; and
2. The second part, which entails the agent selling the goods to themselves is not permissible, because in this case, the agent is assuming the role of seller and buyer at the same time. However, it is permissible if the price is determined by the principal.

(787) In an agency contact, can the agent be the guarantor of the subject matter, for the period the goods are in his possession and before the goods are sold?

The agent is not liable, except in cases of negligence and violations and the goods are in his safekeeping. In terms of his duties, the agent is responsible to collect the debts from the buyers. It is also permissible for the agent to sell to himself, after the owner has specified the price and left the goods, to be sold. This person has the right to contract with the owner to buy these goods and then sell the goods to anybody he so wishes (with a new contract). He can also sell the goods to a client who promises to buy in benefit of the owner. In this case, the agent will only receive a commission from the owner or the buyer, as agreed upon or according to the customary business practice.

(788) Is the following arrangement permissible? The Bank appoints one of its main branches as its agent, together with a stipulation of guarantee in benefit of the Bank, meaning to say that the agent will assume two roles, i.e. as an agent and surety.

It is not permissible to stipulate a surety (kafalah) on the agent, except if it is confined to events that are caused by the agent's negligence and violations.

(789) Is it permissible for an agent to take wages on his agency?

Yes, it is permissible to do so. He can also, of course, perform the agency role on voluntary basis.

(790) Is it permissible for Kuwait Finance House to appoint an agent to buy and sell to the customer on deferred payment basis?

Yes, Kuwait Finance House can appoint an agent to buy and sell to the customer, on deferred payment basis or others.

(791) Is it permissible to appoint a non-Muslim as an agent to represent a company and sign documents on behalf of the company?

The appointment of Muslims is preferred over non-Muslims, unless such appointments (appointment of non-Muslims as agents) are driven by need or necessity.

(792) What are the shari'ah provisions on trading the Shares Of Shari'ah-Compliant Companies that Are Involved In Riba-Based Transactions With Conventional Banks?

The availability of jobs and the requirements that accompany it; investments that are permitted and pure from any unlawful work; those are all considered part of collective obligation (*fardhu kifayah*) because people will need to earn a lawful living.

Therefore, the establishment of Islamic financial institutions and companies in which their activities conform to the principles of Islamic law should be accelerated. Thus, it is compulsory to study new developments in the arena of investment and explain what is permissible and what is not permissible, as well as stating the preferable and the requirement of necessity, and the need which takes into consideration the fact that there are Muslims living in both Muslim countries and Muslim-minority countries.

Verily, the Forum has concluded by searching and discussing on the rule of purchasing and selling the shares of joint stock *Shari'ah*-compliant companies that are involved in *riba*-based transactions with conventional banks.

The first view

Investing money in the said companies is not permissible, as there is an element of *riba*. *Riba* is prohibited, regardless of the amount (*riba*, whether big or small is forbidden) or whether *riba* is apparent during the establishment of the companies or following its establishment.

This is because according to the contract of the company, every participant is a principal agent and performance of the agent is in proportion to the performance of the principal. So, based on that, the acts of those who manage the company in addition to the acts of the participants are considered one and the same. Verily, the scholars have mentioned that it is not permissible to be involved in contracts that include unlawful elements or amount to unlawful elements.

The second view

Due the following considerations, it is sometimes permissible to invest in such companies: Joint stock companies are new, in which they were not in existence during classical times. Nevertheless, it is a sort of partnership, although there are particularities that differentiate it from entities that are known by the scholars. This is because the shareholder has a little

power, as most actions and decisions are co-determined. Hence, the shareholders do not have the powers that are usually at the disposal of the principal;

For companies in which the core business does not involve unlawful elements, the act of being involved in *riba*-based transactions with conventional banks is considered a minor (subsidiary) flaw and not a major one. To further elucidate this matter, we can refer to the Islamic legal maxim that states, "There is forgiveness in subsidiary which is not forgiven in the origin". Furthermore, the *ribawi* elements are just a small percentage of the activities of the companies;

In this era, joint stock companies have become a common or public need, especially for those who do not possess the capabilities of engaging in investments with minimum risks. Therefore, public interest is in proportion to necessity that is permissible in Islamic law, and under the legal maxim which said, "One can do the smallest detriments in order avoid the biggest." This is because there is a scarcity in terms of companies that are truly in compliance with the rules of the *Shari'ah*;

The scholars who have permitted the participation in such companies stipulated a condition, i.e. the investors must purify the profit earned by expending it in charitable ways and transfer their investment to other investment avenues that are permissible in Islamic law, according to their capabilities. In addition, certain rules should be enforced to confirm the portion of interest that is involved in those transactions; and

It must also be confirmed that the actual assets and benefits of the companies are more than the debts.

Third view

It is permissible to participate in such companies, if their activities are conducted for the purpose of public interest, i.e. everyone or almost everyone needs it. It is also permissible to trade the shares, as well as circulating the shares of such companies, if the purpose of trading it is to get profit from the value of share and not from the profit which will be distributed to the participants periodically, and that is based on lawful money or asset that is considered in circulation of shares of the company as mentioned in the second view.

(793) Can the following company's shares be circulated on deferred basis? The company do not receive credit from *riba*-based banks. However, the assets of the company consist of money from conventional banks and their internal fund.

There is no prevention in Islamic law from purchasing and selling the shares of this company on deferred basis, even if the price of the shares is more than the money owned by the company. Hence, it is considered an exchange of money for money, and the share premium is in proportion to the assets of the company.

However, if the core activity of the company is the provision of debt with interest, then it is not permissible to circulate the shares of the company. Conversely, if credit and debt are

not the core activity of the company and do not form the majority of the transactions undertaken by the said company, then it is permissible in Islamic law to circulate the shares of the company.

(794) Is it permissible for the debtor to return to the creditor the value of the shares instead of the shares themselves?

Yes, provided that it is based on the price of the day, at the point of payment.

(795) Is it permissible to purchase the Shares of a company that deals with *riba*?

In regard to the participation of the Islamic Development Bank (IDB) and others in joint stock companies that deals with *riba*, the participants confirmed their previous resolution during a session that was held at Jeddah. The resolution is as follows:

After a comprehensive discussion on the issue, the participants agreed that the Islamic Development Bank should not participate in any company that is not committed to avoid *ribawi* transactions, even though the objectives of the company is not in conflict with the *Shari'ah*. This is because being involved with *riba* is **strictly** prohibited, notwithstanding the fact that IDB invests in companies established in Muslim minority countries.

The management of IDB has to seek investment methods that are in accordance with Islamic law, while at the same time, realizing the development aims of Islamic countries. Such methods are like executing contracts of *salam* or manufacturing contracts.

The participants confirmed that *riba* is forbidden in **all circumstances** and there is no difference between *riba* related to consumption and investment. Conversely, if participation in joint stock companies that deals with *riba* is done for the purpose of transforming the companies to become *Shari'ah*-compliant companies, the participants are of the view that this is permissible, on condition that the transformation is completed as soon as possible.

Recommendations:

The participants reminded the Muslim businessmen on the necessity of establishing companies that conduct their activities according to the injunctions of Islamic law and at the same time, present profit generating opportunities.

(796) As you know, the purchase of shares can be done through a multitude of currencies and is not limited to USD. Is it then permissible to be involved in transactions of equivalence,

whereby the trading of currencies would be concluded in the future, in order to mitigate the risk of foreign exchange fluctuations?

It is obvious that the trading of currencies is considered a transaction of exchange. So, two important conditions of such a transaction are 'equal to equal' and possession is exchanged at the conclusion of the contract (if the subject matters exchanged are of the same category).

On the other hand, if the subject matters are of different categories, possession is exchanged at the conclusion of the contract. This is consistent with the saying of the Prophet (Allah blesses him and gives him peace), i.e. gold for gold, silver for silver, hand by hand, equal by equal. Based on that, it is not permissible to conclude a contract of exchange by deferment from the conclusion of the contract. This is because it is forbidden by the Prophet (Allah blesses him and gives him peace)

(797) What is the Islamic ruling on the following?

A person promises to buy a specific currency, at a specific price, during a specific period, with the seller committed to deliver the amount, when requested during this specific period, on the condition that the buyer pays a special amount that is called right of buying. The customer will lose this right if he does not complete the purchase transaction.

This transaction is not permissible in Islamic law, because it is a promise to buy currency. In Islam, the form of currency trading that is allowed is selling completely and possession is transferred on the spot.

(798) The prospectus of the clearance fund included guarantee of the Institute's partnership shares by its original value. What is the Islamic ruling on that?

This guarantee is a kind of third party guarantee and this adaptation is permissible without in the case that the main Institute will become a partner in partnership shares that is offered to recover decreasing of partnership shares, whereby it is not permissible in that for the Institute to retrieve the original value, because that is guarantee of partner for his partner.

However, if the investment amount (partnership shares) represents with asset that increased whereby the Institute does not need to buy partnership shares, in this case, its guarantee for retrieval is permissible by any value, even it is by the original value. After going around, the Council concluded:

In case of need to complete partnership shares, the bank can enter (director of funds) to recover the decrease and it is not guaranteed, the Institute will remain to be guaranteed and far from partnership and management.

In case of the proportion of the decrease is over the bank's ability, so the main institute can buy the partnership shares and will promise, in this case, to retrieve the shares by market value (additional on original value or decreasing) or any profit or loss and this case as technicians have explained, is very rare, but can affect on partnership shareholders to lose the guarantee.

(799) Are the following transactions permissible in Islamic law?

A customer approaches Kuwait Finance House to conclude a *murabahah* contract. In this arrangement, Kuwait Finance House will buy the relevant goods from the seller (foreign party). After possession has transferred to Kuwait Finance House, Kuwait Finance House will then sell those goods to the customer.

At the same time, the customer wants Kuwait Finance House to buy the required foreign currency from him when Kuwait Finance House buys the goods from the original seller. Thus, when the price of foreign currency which the customer possessed is appropriate for Kuwait Finance House, even if it compares to the market price at the time.

The transactions can be done, provided the contract of selling the goods is separate from the contract of buying the currency from the customer.

(800) As you know, the purchase of shares can be done through a multitude of currencies and is not limited to USD. Is it then permissible to be involved in transactions of equivalence, whereby the trading of currencies would be concluded in the future, in order to mitigate the risk of foreign exchange fluctuations?

It is obvious that the trading of currencies is considered a transaction of exchange. So, two important conditions of such a transaction are 'equal to equal' and possession is exchanged at the conclusion of the contract (if the subject matters exchanged are of the same category).

On the other hand, if the subject matters are of different categories, possession is exchanged at the conclusion of the contract. This is consistent with the saying of the Prophet (Allah blesses him and gives him peace), i.e. gold for gold, silver for silver, hand by hand, equal by equal. Based on that, it is not permissible to conclude a contract of exchange by deferment from the conclusion of the contract. This is because it is forbidden by the Prophet (Allah blesses him and gives him peace)

(801) Is it permissible for us to appoint a certain entity as an agent to buy some goods for us (on the spot) and subsequently, the agent would sell the goods to themselves, on deferred terms?

The question consists of two parts:

1. The first part is permissible; and
2. The second part, which entails the agent selling the goods to themselves is not permissible, because in this case, the agent is assuming the role of seller and buyer at the same time. However, it is permissible if the price is determined by the principal.

(802) During the purchase transaction, is it necessary for the agent to mention to the seller that he is an agent of Kuwait Finance House?

No, it is not necessary to do so. However, it is better if he notifies the seller of the fact, for disciplinary of the transaction and specification of final source to execute the contract.

(803) Is it permissible for me to make someone an agent, to sell on my behalf a group of goods for different persons, with the following conditions?

1. There is a minimum selling price that must be complied with by the agent. He cannot sell below that price;
2. There is a maximum credit period. The agent must collect the full amount from the buyer within the credit period; and
3. The agent is responsible to ensure that all debts are collected from the buyers, which are then paid to me, as the principal

It is permissible for the principal to stipulate conditions that are restrictive, in terms of

time, place, work, measure and period, as well as any other stipulations that the principal and the agent can agree upon. It is the duty of the agent to do his best in fulfilling the rights of the principal.

(804) Is it permissible to clearly mention in an agreement, which is by nature Islamic, that the agreement is subjected to English law? Does that amount to an acknowledgement that English law is superior to Islamic laws?

The bank explained that due to the nature of transactions at the international level, English law must be used. The Shari'ah Council concluded that there is nothing wrong with

mentioning the application of man-made laws, as long as it is pertaining issues that that do not violate the Shari'ah.

(805) Today, what is practised by the goldsmiths is that they take used gold at the price of 30 Riyals and sell it at the price of 40 Riyals. What is the rule of Islamic law on that?

It is not permissible to exchange a lower quality gold with a higher quality one and pay the difference. This kind of sale is forbidden in Islamic law. The proof of this prohibition is the hadith, where one day, Bilal r.a. brought Barni (a kind of dates) to the Prophet s.a.w. and the Prophet s.a.w. asked him, "From where have you brought these?" Bilal r.a. replied, "I had some inferior type of dates and exchanged two Sas of it for one Sa of Barni dates, in order to give it to the Prophet; to eat." Thereupon, the Prophet s.a.w. said, "Beware! Beware! This is definitely riba (usury)! This is definitely riba (usury)! Don't do so, but if you want to buy (a superior kind of dates), sell the inferior dates for money and then buy the superior kind of dates with that money." Based on this hadith, we can conclude that if a woman has a lower quality gold and she wants to buy a better quality gold, she can do so by firstly, selling the lower quality gold in the market and secondly, use the money obtained to buy the better quality gold.

(806) One of the benefits given by the Faisal Islamic Bank of Bahrain (the Bank) to their employees is coverage for medical treatments, whereby the expenses incurred by the employees will be reimbursed by the Bank, provided the employees submit the receipts of such treatments. In order to provide such benefits, is it permissible for the Bank to seek health insurance coverage from one of the insurance companies in the market, i.e. by paying a monthly or yearly premium that is fixed for each employee?

Health insurance is one financial product that benefits the masses. It is permissible for the Bank to seek insurance coverage from one of the Islamic insurance companies in the market, by way of paying premium, whereby the Bank deposits money in an account. The account will then be combined with other accounts. Through this arrangement, the Islamic insurance company reimburses the medical expenses incurred by the employees of the Bank, either fully or partially, according to the insurance agreement. There is no uncertainty or ambiguity in this contract. Thus, this type of group insurance is permissible.

(807) What is the Shari'ah saying On Co-operative Insurance?

The decision of the Council of Head of Scholars of Saudi Arabia no. 51, dated 4/4/1397 on the permissibility of co-operative insurance and its compliance with the principles of Islamic law is as follows:

All praise for Allah only, bless and peace be upon the Prophet whom there is no prophet after him. Tenth board session of the Council of Head of Scholars, held in city of Riyal, in the month of Rabi'al- awal.

The Board has taken into account the announcement made by a group of experts on co-operative insurance, which is said to be a viable alternative for Muslims wanting to avoid commercial insurance. It is also mentioned by the experts that co-operative insurance will be able to realize the objectives of Islamic law.

After the proposal was studied, researched and the opinions of the scholars sought, the Board decided, with the exception of his Excellency al-Sheikh 'Abdullah bin Muni', that Islamic co-operative insurance is a viable alternative to commercial insurance, as it will help to fulfil the needs of the Muslim society, due to the following reasons:

1. The co-operative insurance firm is founded by using the concept of the donation of contracts, which originally means 'ceasing or avoiding damage and sharing in bearing the responsibility, in case of crisis, by way of contribution of a special sum of money to compensate those who is in detriment;
2. The shareholders of the co-operative insurance firm do not object trading or profiting from their partners' money. However, the main purpose of the firm is to distribute the damage and crisis amongst themselves, as well as co-operating in bearing detriments;
3. Co-operative insurance does not contain the element of interest (riba), either incremental interest or compounded interest. Unlike commercial insurance, it is not a contract of interest. The premium/donation received will not be subjected to riba-based transactions;
4. Unlike commercial insurance, whereby profit maximization is key, in co-operative insurance, the main purpose is to help each other in the spirit of solidarity. So, the premium paid is considered as a donation. Thus, even if the participants/donors are not sure of the inner workings of the firm, it does not matter, as long the responsibility of bearing losses are shared; and
5. The co-operative insurance firm is managed by the representatives of the donors. The representatives will act as the management team and will invest the premiums, with the goal of realizing the purpose of the corporation. In this matter, the management team can work on voluntary basis or receive salaries, just like any other company.

With the exception of his Excellency al-Sheikh 'Abdullah bin Muni', the Board suggested the following:

1. There must be a commitment towards propagating the 'Islamic economics thinking'. Individuals must be given the freedom to perform their duties and manage economic projects. The role of the government is only to complement the efforts of the individuals and provide them with the necessary assistance, as well as establishing guidelines to ensure best practices and the success of the projects undertaken;

2. The donors of the co-operative insurance firm must also regard themselves as part of the firm, so as to work together to make sure that the projects undertaken reach successful conclusions. By being aware of the performance of the firm, it will make the donors more concerned and eager to prevent the specified risk event from happening. This is because they understand that if the risk event does happen, they will have to pay more premium in the future, and vice versa;
3. Before the management team is appointed, they should be well trained, so that they know how to establish a co-operative insurance firm, as well as being motivated to give their best, to ensure the success of the firm; and
4. The public should not expect that every loss that they incur as a result of detriments must be compensated by the government, through the co-operative insurance firm. They must realize that they are the donors, who are sharing the specific risks with the shareholders of the said firm. Thus, they are responsible to compensate each other, and not the government.

To further ensure the smooth implementation of co-operative insurance, the Board suggested the following (with the exception of his Excellency, al-sheikh 'Abdullah Muni'):

1. The Organisation of Co-operative Insurance should have branches and divisions in all the cities of Saudi Arabia, in which each branch will handle specific risks. For example, there must be a branch for health insurance, insurance against disability and aging, travel insurance, education insurance and insurance for professionals, such as insurance for engineers, medical doctors and lawyers;
2. The Organisation of Co-operative Insurance should be flexible and avoid using methods which are restrictive in nature;
3. Within the Organisation, there should be a board, which decides and advises on planning, the guiding principles and decision making, as long as they are in accordance with the principles of Islamic law;
4. In the abovementioned board, there should be a representative from government and a representative of the shareholders. These representatives will perform part of the supervisory functions, i.e. to make sure that the company is well run and protected from the high risk of failure; and
5. In the case that additional premiums are needed due to a situation where the risk exceeds the balance of the fund, the government and the shareholders will bear the additional premiums.

The Board also opined that the co-operative insurance company must be managed by experts and specialists, which are chosen by the government.

(808) If the bank gave a benevolent loan to one of their customers, and the customer delayed in making payments, is it permissible for the bank to accept compensation from the customer, in the form of gift (*hibah*), although this compensation was not stipulated or mentioned in the loan contract? Furthermore, is it permissible to include this *hibah* in the bank's profit?

The Council explained that the bank can accept the *hibah*, provided it is not stipulated in the contract and it is not the custom to do so. It is also permissible for the said amount to be included in the bank's profit. Allah knows best.

(809) The bank incurred management and legal expenses in its efforts to recover debts from delinquent customers. Is it permissible for the bank to claim the expenses incurred from the said customers?

Yes, it is permissible to do so, provided that the amount claimed only includes the actual loss/damage incurred by the bank, i.e. it excludes loss of earnings. Allah knows best.

(810) Due to delayed payment on the part of a petroleum company, coupled with the economic condition facing the country in which the company is operating in, a method for the reconstruction framework of matured *murabahah* debts was proposed.

In that method, the creditors will be involved in new *murabahah* transactions, according to the following steps, so that the extension of debts, which is not permissible in Islamic law is avoided. The transaction will be concluded every time a transaction of actual new *murabahah* to sell goods after that the possession of the profit will conclude without the cost. The profit from the former *murabahah* will then be used to finance the next *murabahah* transaction, and so on, detailed as follows:

1. The *mudharib* (the bank) involved will request for a USD-denominated account to be opened at the central bank of the domicile country. The account, which will be opened on behalf of all *rabbul mal* (capital providers of the bank), will be under the name of the *mudharib*. This deposit account is called 'trade protection agreement';
2. The central bank will act as the guarantor (*kafil*), in order to pay for the amount that is due on the matured transaction (cost + *murabahah* + fine on delayed payment that will be expended in charitable ways) in the above mentioned account (as account registration);
3. The *mudharib* (entrepreneur) and *rabbul mal* (capital providers) will enter into a new *mudharabah* agreement;
4. The *mudharib* will conclude a new *murabahah* agreement with the debtor, and the central bank will be the guarantor for the new *murabahah* agreement (in addition to the guarantee that it will be providing in step 2);

5. The customer (the debtor) will act as the *mudharib's* agent, to purchase the goods of the new *murabahah* from the exporter, for the benefit of the *mudharib* and the capital providers;
6. The customer will continue to act in his capacity as the *mudharib's* agent, for the execution of transactions, by requiring to withdraw the amount that is specified in the new transaction (and equal to the cost of matured transaction), by way of giving an instruction for the central bank to deduct from the above mentioned account, in order to deposit it in a registration account at the central bank;
7. On the due date of the new transaction, the debtor or its guarantor will perform by procedure of book registration with the cost of the new *murabahah* and its profit;
8. The *mudharib* will withdraw the profit from the account after paying every *murabahah* transaction without the cost, where it will remain in the account as a capital for the *mudharabah* to execute a new *murabahah* transaction;
9. Steps 5 and 6 will be repeated until the maturity date; and
10. The steps (5-9) will be repeated by way of entering a new transaction at every due date, until the maturity date of the last transaction.

The Council has read the above mentioned steps in regard of the reconstruction of the framework of the debt that is due to the bank (as *mudharib*, on behalf of the capital providers), which is bound on the petroleum company. The Council decided that these steps are permissible, if the following matters are observed:

1. To not extend the period of matured *murabahah* debts, i.e. the period will not be extended, with the additional charge of a penalty. The period will remain fixed as they were;
2. To expend the delayed payment penalties for charitable purposes;
3. The new *murabahah* will be an actual sale transaction and not mere form or renew for matured *murabahah*, and there is no prevention from agreeing on a higher profit rate, as compared to the previous *murabahah*;
4. To send the complete set of documents of the *murabahah* transactions, such as the contract of sale and sale invoice, letter of credit, certificate of storage and certificate of transporting or shipping and certificate of products to the *mudharib*;
5. To conclude an agency contract for the customer, whereby the customer will appoint the *mudharib* as an agent to possess the goods in benefit of the *mudharib* and capital providers, before purchasing the goods from the exporter;
6. To exchange the two notices between the customer and the *mudharib*; the first one contains information by executing the agency and completion of purchase contract in benefit of the *mudharib*, and giving offer from the customer to purchase the goods for himself. The second notice contains an acceptance of the *mudharib* to sell the goods to the customer, and the specifications of the goods are mentioned in the two notices. The quantity, cost, profit, period of payment and so on will also be mentioned; and
7. To specify the profit of the *mudharib* by percentage, this is known from the profit and does not form a part of the *murabahah* profit. This is because the profit of the *murabahah* will be concluded after the *mudharabah* transaction and one of conditions of *mudharabah* is

that the profits (by percentage and not by portion) must be mentioned in the contract. Allah Knows best.

(811) If a customer pays his debt before the due date, is it permissible for the bank to discount the amount payable by the customer? In the contract, is it permissible to include an article to that effect or issue a promise to do so?

Such a clause cannot be stipulated in the contract of debt. It is also not permissible for the bank to issue a binding promise to discount the debt or relinquish a portion of their profit, in proportion to the payment made by the customer. However, it is permissible to discount the debt, if no condition about it was mentioned in the contract. Verily, the Fiqh Academy has issued a confirmation of the fact. In the contract, it could be mentioned that the bank has the option (not binding on the bank) to discount or write-off the debt of the customer. Allah knows best.

(812) What is the Islamic ruling on the following transactions?

The Bank wants to buy a specific real estate or part of it (such as an apartment) from another party. Formal registration of this sale, such as transfer of ownership may not conclude and other procedures may also not be completed until the Bank will conclude an agreement of deferred sale with the buyer and give option to the Bank (in acceptance of this sale), so that the Bank is given the opportunity to sell the asset to anyone.

However, if the Bank does not want to sell the asset, the contract also gives the it the option to lease the asset to the same seller or to one of the seller's companies or another party, which is not related to the Bank.

Another aspect of this arrangement is that if the bank leases the real estate that it has bought to another person and the person leased the real estate to the same seller, then the seller acts as the guarantor (*kafil*) of the lessee for payments due to the lessor (the Bank).

If the Bank has bought a real estate, in which the conditions and elements of the sale have been completed, then the Bank now owns the real estate, notwithstanding whether registration of this purchase transaction has been done officially by the relevant authority of documentation or its documentation has been done by the parties, as documentation itself does not constitute ownership but rather used for recording purposes.

So, ownership is confirmed after offer and acceptance are concluded by those who are eligible for that with completion of conditions of the sale. Then, the Bank has the right to lease the real estate to the seller or another person, according to what they had agreed upon, such as assessment of rental and determination of leasing period.

If the Bank and the seller of this real estate want to conclude a contract of sale, whereby the seller wants to retrieve what he has sold to the bank by way of a purchase contract from the Bank, it is permissible for this seller to give a binding promise to buy the subject matter after a specific period of time, and the Bank has the option to sell the real estate at the purchase price or negotiate a new price with the buyer. Alternatively, the Bank can also sell the real estate to another party.

If the seller jointly owns the property, where the Bank only bought a part of it and in the case that the Bank wants to sell its share of the real estate to another party, the seller has the right to buy that part by preemption (shufa'ah – the Bank has to make an offer to sell to the seller prior to offering it to other potential buyers) because of its share in the real estate.

If the Bank leased the real estate from somebody else to another person, and the seller acts as a guarantor for the tenant, then the tenant leased the real estate to the seller, so we cannot see any prevention (in Islamic law) from the permissibility of this leasing and binding of guarantee, as well as its continuation, with observation that it is necessary to ensure that the contracts are separate and independent of each other, i.e. contract of sale, contract of promise to buy, leasing contract and surety (kafalah) contract, where one of them will not be a condition to execute another contract.

This view is based on the hadith narrated by Abu Dawud and Al-Tirmizi from Ibn 'Abbas (Allah be pleased with them), verily, the Prophet s.a.w. said, "It is not permissible to combine loan and sale in contract, or two conditions in one contract of sale or selling what you do not possess".

(813) One of the benefits given by the Faisal Islamic Bank of Bahrain (the Bank) to their employees is coverage for medical treatments, whereby the expenses incurred by the employees will be reimbursed by the Bank, provided the employees submit the receipts of such treatments. In order to provide such benefits, is it permissible for the Bank to seek health insurance coverage from one of the insurance companies in the market, i.e. by paying a monthly or yearly premium that is fixed for each employee?

Health insurance is one financial product that benefits the masses. It is permissible for the Bank to seek insurance coverage from one of the Islamic insurance companies in the market, by way of paying premium, whereby the Bank deposits money in an account. The account will then be combined with other accounts. Through this arrangement, the Islamic insurance company reimburses the medical expenses incurred by the employees of the Bank, either fully or partially, according to the insurance agreement. There is no uncertainty or ambiguity in this contract. Thus, this type of group insurance is permissible.

(814) How may one avail oneself of an Islamic home finance facility in a locality where banks do not offer a Shari'ah-compliant version of home financing?

In localities where an Islamic home finance facility is not available, the local Muslim community may set up a 'co-operative fund' that may issue mutual investment units (MIUs) to be subscribed by the members and general investors who are willing to invest their funds on a mudarabah basis. A fund manager may use the proceeds of MIUs to provide housing finance on the basis of murabaha (in economies where inflation is not a problem) and diminishing musharakah (with arrangement of shirkatulmilk – partnership by ownership, and lease of financier's part to the client) in economies with an obvious inflationary trend. Diminishing musharakah is the best mode both from a Shari'ah as well as an operational point of view. The members funds can be facilitated for:

purchase of houses;

construction of a house on a plot of land owned by the client;

renovations/additions/amendments in houses;

balance transfer from interest-based to Shari'ah-compliant finance.

(815) Are there different interpretations of Shari'ah in different parts of the Muslim world?

Yes, there have been some differences in interpretation of some Shari'ah principles within the context of structuring Islamic financial products. However, as the Islamic finance movement has achieved a significant milestone in establishing a general consensus on the philosophy and products for business, with large-scale acceptance of the mainstream theory and practice, slight differences in concepts are no longer issues of concern. Development of any ethical and belief-based discipline depends on the acceptability of its conceptual underpinnings and their implementation procedures. The mainstream theory of Islamic finance has got this acceptance and the industry has to be developed on the basis of the acceptable concepts. Some dubious concepts that served as the basis for application in a few products stemming from particular parts of the Muslim world could not obtain general acceptance and many scholars have at times argued against them. For example, products that involve bai al-dayn (sale of debts/receivables), and bai al-ina (buy-back arrangements) are not indisputably acceptable to all Shari'ah scholars.

(816) In ijara, is calculation of a mark-up rate between the disbursement period and the commencement of the rental period halal? Is it not charging mark-up to oneself (as ijara assets are considered to be the institution's assets as opposed to the lessee's assets)? In ijara, the lessor is exposed to both the risk (of damage to the assets without negligence of the lessee) and reward (rental) relating to the leased asset.

The lessor is entitled to the rental only after the asset is handed over to the lessee in a useable form. Any amount received prior to this would be treated as advance income adjustable against the rent when it becomes due. Rental of an asset is mutually agreed on the basis of the value of the asset that is determined by a number of factors including, inter alia, its cost to the lessor, related facilities available, etc. The lessor can genuinely keep in view the total cost it had to incur in making available the asset for use. Hence, a bank, as lessor, can keep in view the disbursement period for determining the rental, but the rental would become due only after delivery of the asset to the lessee. If the deal is cancelled in-between, i.e. the client does not take the asset on lease as per his requisition, the bank will not be allowed to charge any 'cost of funds'. At most, it can claim the actual loss that it incurred due to breach of 'promise to lease' by the customer and it cannot include the financial loss.

(817) How does an Islamic credit card differ from a conventional one?

An Islamic credit card certainly does not involve interest. The basic elements of a Shari'ah-compliant credit card are the following:

Interest free revolving credit line;

Cardholder to repay certain amount of principal every month and the remaining amount to be deferred to the next month with no interest charged;

Cardholder not permitted to use the card for purposes prohibited by the Shari'ah;

Some cards provide a cash limit for emergency cases;

Most credit card providers charge an annual fee for issuing the card in order to cover expenses related to card issuance and usage;

Any penalty levied as a deterrent against defaults must go to a charity account.

(818) What is my liability with regards to misappropriated goods that are altered in a way that affects their market value?

If a good is neither damaged nor destroyed but merely altered in a manner that increases or decreases the value of the good, the owner is entitled to choose whether to demand compensation or accept the good back as it is.

(819) Is it permissible for the bank to join two accounts into one in the name of both individuals with the understanding that each of the two will have the right to withdraw the entire balance or a part of it even after the death of the other? Also is it lawful to grant a third person wishing to remain anonymous, a right to access the account as well?

It is permissible for the bank to join two accounts into one in the name of both individuals with the understanding that each of the two will have the right to withdraw the entire balance or a part of it even after the death of the other. They are both agents and the agency of one will not be disrupted by the death of the other.

With regard to adding a third member who wishes to remain anonymous, the bank requires that a document be produced with the signature of the present depositor in which he admits that the deposit also belongs to another person whose name is mentioned but must be kept in secret by the highest authorities of the bank.

(820) Is it obligatory to earn a halal income?

It is obligatory to earn a lawful income if one is unable to support oneself and one's dependents without doing so, though it is merely permissible if one is able to support oneself and one's dependents without earning.

(821) What does Islam say about copyright?

It is obligatory to abide by the laws of copyright and intellectual property unless doing so compels one to do something impermissible or refrain from something obligatory according to the standards of Islamic Sacred Law; it is permissible to store printed or electronic copyrighted material for oneself or to share it with others in a limited manner that does not financially or otherwise harm the copyright owner.

(822) Is a transaction involving dissimilar items sold by measurement deemed valid?

It is permissible to trade two different goods of different weights (e.g. 1 dozen oranges for 2 dozen apples) and, if not transacted on spot, the goods should be kept separately.

(823) Is it permissible to derive benefit in any way from unlawfully gained property?

It is impermissible to buy, sell, trade, use, rent, borrow, finance, invest in, bequest, endow, gift, give in charity, put up as collateral, give a guarantee for or derive any form of benefit from unlawfully gained property that one is certain is unlawfully gained; if there is doubt then it is permissible though it is always superior to avoid the doubtful

(824) Is it lawful for the bank to accept the guarantee of an owner for a contractor constructing a building for the guarantor himself?

It is lawful for the bank to accept the guarantee of an owner for a contractor in the construction of something for the guarantor himself since the guarantor acts as a surety in relation to the work that is taking place between the contractor and the bank. The fact that the construction is undertaken in the guarantor's interest has no bearing on the matter.

(825) What should the bank do with money held in accounts for extended periods of time for which there is no claimant?

These amounts may be given away in charity. If the rightful owner returns, he must be informed of what was done. If he still demands the money, the bank is financially obligated to provide compensation from its charitable accounts

(826) Can a Muslim misappropriate the wealth of a non-Muslim?

Islam does not differentiate between Muslims and non-Muslims in the matter of misappropriation. Some Muslims mistakenly regard the theft of non-Muslim property to be commendable. Rather, any kind of theft is forbidden.

(827) Is it lawful for the bank to receive a commission for Takaful policies based on the number of policies taken out by clients having purchased cars through the bank?

It is lawful for the bank to receive a brokerage fee for serving as an intermediary between the client and the insurance company. This fee is linked directly to the amount of the bank's effort, ascertainable through the insurance documentation.

(828) What is my liability with regards to misappropriated goods that are altered in a way that affects their market value?

If a good is neither damaged nor destroyed but merely altered in a manner that increases or decreases the value of the good, the owner is entitled to choose whether to demand compensation or accept the good back as it is

(829) What should the bank do with outdated, unclaimed cheques issued in favor of clients whose accounts are now dormant?

It is permissible to give these funds away in charity after the bank has made every attempt to contact the client. If the owner returns after the funds have already been given away, he must be informed of what was done and if he still demands payment he must be reimbursed from the general shareholder's account.

(830) Is it permissible to demand compensation upon repayment of misappropriation of property?

It is impermissible to demand any form of consideration for returning misappropriated property, though the owner is entitled, at his own discretion, to make a reduction in the repayment or to make a gift of reward to the one returning, provided the gift is not a condition for the return.

(831) Is it lawful to transfer a right to benefits from a Takaful insurance plan to the purchase pledger at the conclusion of a Murabaha sales contract?

It is lawful to transfer a right to benefits from a Takaful insurance plan to the purchase pledger at the conclusion of a Murabaha sales contract, where he also serves as the bank's agent in settling accounts with the insurance company. Once the damage or loss to the goods if any is recompensed, the client does not require recourse to the bank and may deal directly with the Takaful company alone

(832) Is it permissible to accept welfare payments from the government?

It is permissible to take welfare payments, provided one fulfills the conditions necessary to be eligible; it is impermissible to lie about one's circumstances in order to receive welfare, even if the source of the payments is a non-Muslim government.

(833) Is it permissible to accept or pay earnest money?

It is permissible to accept or pay earnest money (arbun) in the Shariah.

(834) Some debtors have the ability to repay on time but continue to defer. Is the bank permitted to charge them a fee?

It is not lawful to charge anything above the due amount for a delay in repayment regardless of whether the delay is intentional or not. Instead the bank should seek legal recourse against the debtor and at the time of entering into the transaction should include a charity clause entitling the payment of penalties to a designated charity.

(835) Is it permissible for the bank to offer prizes through a drawing as an incentive to lease?

It is permissible for the bank to offer prizes through a drawing as an incentive to lease.

(836) Is it permissible for brokers to charge a fee for their service?

It is permissible for brokers and managers to charge a fee for their services, either as a pre-agreed fixed amount or as a pre-agreed percentage of the stock's price or the fund's net asset value.

(837) What is my liability as regards misappropriated items lost and repayed for and subsequently found?

If items wrongfully taken and subsequently lost had been compensated for and then found, there are two options: 1) if the compensation is equal to or greater than the market value (at the time of misappropriation) the item is not returned; 2) if the compensation is less than the market value (at the time of misappropriation) the original owner decides whether to take the item or accept the compensation as it is. For lost or unclaimed property, or property found on one's premises, the property should be returned to its rightful owner

(838) Would the gift be returnable if either the giver or the recipient dies?

No gift is returnable once either the giver or the recipient dies.

(839) May a person coerce another into giving a gift? And may a person force the other into accepting a gift?

The giver and the recipient must agree to the gift; a gift coercively taken from the giver or forcefully given to the recipient is invalid; agreement may be written, spoken or unspoken (e.g. a nod).

(840) What is the exact time before which the giver may reclaim his gift?

The giver may reclaim a gift before the recipient takes constructive possession of it, but not after, however insignificant the gift.

(841) Is a gift given by mistake considered a valid gift?

A gift given in error is still considered to have been given validly and may not be reclaimed by the giver unless the recipient agrees to its return. Once the gift is validly reclaimed, ownership rights return to the claimant.

(842) May the giver of the gift attach restrictive conditions to the usage of the gift?

It is impermissible for the giver to impose conditions on how the gift will be used by the recipient.

(843) Must the gift be separated from the giver's property?

The gift should be separated from the giver's property and until it is separated it remains the property of the giver, even if he considers the gift as having been given.

(844) Is it permissible to enter into a contract that directly entails or assists in the unlawful?

It is unlawful to enter into a contract that directly entails the unlawful (i.e. work that is itself unlawful or even assists in the unlawful) or to work for an employer (even if one does not participate directly in the transactions) whose primary business is unlawful (e.g. interest-based banking, insurance, futures trading).

(845) Who is obliged to support a needy parent: their spouse or their children?

If one parent is needy and the other is not, the obligation of providing support first returns to the parent who is not needy, then the obligation goes to the children.

(846) What must I do if I am unsure of the amount misappropriated?

If the one who misappropriated is unsure of the amount taken, it is recommended to estimate a bit on the higher side.

(847) May I defer payment when transacting an item sold by weight with an item sold by measurement?

It is permissible to defer payment (or exchange) when transacting items sold by weight with items sold by measurement or counting (or vice versa); it is a condition for the validity of such a trade that the items be of different categories.

(848) Is it lawful to seek the return of a brokerage fee paid to a broker if the deal is dissolved after the contract is signed?

The amount paid as the brokerage fee is the right of the broker and may not be taken back after the contract is signed regardless of whether or not the contract is subsequently dissolved.

(849) May I trade like items sold by measurement?

It is permissible to transact any like goods sold by measurement or counting (e.g. one type of orange for another). It is not obligatory that they be equal weight, but they must be equal in measure or count, and the transaction must be conducted on spot

(850) May I compensate for misappropriation by returning the equivalent market value of the misappropriated item?

If the owner and the one who misappropriated both agree that the owner will take the equivalent market value of the misappropriated item rather than the item itself, the item becomes permissible for the one who misappropriated to keep and use. Market value is measured as the highest market price between the times of theft and loss, destruction or unavailability.

(851) What is the Shariah ruling with regard to the bank's payment of income tax from the amount deducted annually for the investment risk reserve?

Where applicable, the bank must pay tax from the amount deducted annually for the investment risk reserve.

(852) What is my liability as regards misappropriated money if the owner is not traceable?

If money was taken and every reasonable effort has been made to locate the original owner but he is untraceable or no longer exists, the one who misappropriated should give the money away in charity; it being superior to give charity to those eligible to receive zakat rather than an ordinary charity; while the debt would be cleared, it would be superior, but not obligatory, to continue searching for the original owner; it is impermissible to give the money away in charity when one is able to locate the rightful owner.

(853) What should the bank do with outdated, unclaimed cheques issued in favor of clients whose accounts are now dormant?

It is permissible to give these funds away in charity after the bank has made every attempt to contact the client. If the owner returns after the funds have already been given away, he must be informed of what was done and if he still demands payment he must be reimbursed from the general shareholder's account.

(854) Is it permissible to perform the pilgrimage with borrowed money?

A pilgrimage performed with borrowed money is valid provided the conditions for performing pilgrimage are met and the creditor obliges. The debtor is entitled to perform the pilgrimage without taking permission from the creditors if the debtor has no arrears and if his performing the pilgrimage does not hinder his ability to continue repaying the creditor on schedule. It goes without saying that one may not take an interest-based loan in order to perform pilgrimage.

(855) May one continue doing his job with an employer whose primary business is unlawful, given the job he does is not directly linked to the unlawful?

If one is employed in lawful work (e.g. working as a security guard for an interest-based bank) or work that is not directly unlawful (e.g. working as a secretary for an interest-based bank) with an employer whose primary business is unlawful, it is permissible, though disliked, to continue with the work but superior to find work with an employer whose primary business is lawful.

(856) Are employees and temporary workers held accountable for loss, damage or theft resulting from their negligence?

Employees and temporary workers do not count as individuals who rent out their services, and therefore may not be asked for compensation for loss, damage or theft, even due to their own negligence, unless the loss, damage or theft is intentional, in which case compensation may be demanded.

(857) Who is entitled to initiate the cancellation of an employment contract?

Both employer and employee are entitled to cancel the employment contract at any time given an agreed upon notice period, though if the employer cancels the contract after the employee begins work, the employer is obligated to pay for work done at the agreed upon rate; but if the employee cancels, whether work had begun or not, the employee is entitled to nothing.

(858) If one is required to perform occasional unlawful acts during the course of an otherwise lawful job, should one continue working with such an employer?

If one is employed in lawful work that occasionally requires one to perform something unlawful, one must leave the employer unless one's obligation to perform the unlawful work is waived.

(859) What is said of doing a job directly linked to the unlawful, or working for an employer whose primary business is unlawful?

It is unlawful to perform work that is directly unlawful (i.e. work that is itself unlawful or even assists in the unlawful) or to work for an employer (even if one does not participate directly in the transactions) whose primary business is unlawful (e.g. interest-based banking).

(860) Is it permissible to record interest-based transactions?

The unlawfulness of any form of employment depends on how direct one's involvement is to the unlawful: direct involvement entails that one participates in the actual execution of an unlawful transaction; using interest-based transactions as an example, the one who buys, sells, trades, witnesses, records, calculates or in any way directly assists in an interest-based transaction during its execution is culpable (e.g. car buyer who contracts an interest-based lease; homeowner who takes a mortgage; futures and options trader; insurance salesman; loan officer); if an accountant, for instance, merely records a transaction that has already taken place, the involvement is not considered direct, and therefore remains permissible, though it is always superior to avoid the doubtful.

(861) Is it permissible to provide investment consultancy services at a company that solicits interest-based loans for its clients from conventional banks and carries out feasibility studies for investments based on these interest-based loans?

There are two considerations with respect to the permissibility of working in such a company; timing and level of involvement.

Timing - If one assists in an impermissible transaction before the point of execution, one may fall into the impermissible. If one merely records an impermissible transaction that has already been executed (ie. postmortem auditing and accounting), one does not fall into an area of clear prohibition, though the scholars state that this is better to avoid.

Level of involvement - If one is involved in initiating, proposing, assisting, or executing an impermissible transaction, one is culpable.

Since the company facilitates in obtaining of interest-based loans for its client and advises on them, providing investment consultancy services for such a company would be equivalent to assisting in prohibited transactions and, therefore, impermissible.

(862) An employee believes that a portion of his wages was taken for work not done altogether. What should he do?

If an employee is certain that wages were taken for work not done altogether, those wages must be returned to the employer, unless the employer forgives the employee; if the wages were taken for work done partially or poorly, those wages may be kept by the employee.

(863) Are non-compete clauses that restrict an employee's ability to work in another company valid?

Non-compete clauses that restrict an employee's ability to work in another company are impermissible and corrupt the entire contract, though the contract itself remains valid and the clause would only have the effect of a non-binding promise.

(864) If one is required to perform occasional unlawful acts during the course of an otherwise lawful job, should one continue working with such an employer?

If one is employed in lawful work that occasionally requires one to perform something unlawful, one must leave the employer unless one's obligation to perform the unlawful work is waived.

(865) Is it lawful to purchase the business license of a company that operates on the basis of riba when it is being sold and none of its riba-based assets remain, with the intention to make its operations Shariah-compliant?

It is lawful to purchase the business license of a business whose operations are riba-based for the purpose of making them Shariah compliant.

(866) Is it lawful to transfer a right to benefits from a Takaful insurance plan to the purchase pledger at the conclusion of a Murabaha sales contract?

It is lawful to transfer a right to benefits from a Takaful insurance plan to the purchase pledger at the conclusion of a Murabaha sales contract, where he also serves as the bank's agent in

settling accounts with the insurance company. Once the damage or loss to the goods if any is recompensed, the client does not require recourse to the bank and may deal directly with the Takaful company alone.

(867) What does the Shariah say regarding the obligation of supporting one's children?

Both men and women are equally obligated to support their children until the child reaches adulthood, including those of their Muslim or non-Muslim children (grandchildren, great grandchildren, and their direct descendants) stricken by poverty (obligatory only when there is poverty), even if these children grow to adulthood while they are still impoverished.

The obligation of support rests on parents who have the means to do so once they have paid the typical maintenance for themselves (and one's wife, if a husband) necessary for one day before spending it on one's children. In order to satisfy the obligation to support one's child, which includes repaying any debts the child incurs in order to cover the child's living expenses, one is even obligated to sell one's own property in excess of one's needs.

The right of the younger child comes before the right of the older one (respectively for grandchildren, great grandchildren, and their direct descendants); but the right of one's parent comes before the right of one's child; though this precedence is only relevant in the absence of sufficient funds to support everyone; male and female children have an equal right to maintenance.

(868) Some debtors have the ability to repay on time but continue to defer. Is the bank permitted to charge them a fee?

It is not lawful to charge anything above the due amount for a delay in repayment regardless of whether the delay is intentional or not. Instead the bank should seek legal recourse against the debtor and at the time of entering into the transaction should include a charity clause entitling the payment of penalties to a designated charity.

(869) Is it lawful to seek the return of a brokerage fee paid to a broker if the deal is dissolved after the contract is signed?

The amount paid as the brokerage fee is the right of the broker and may not be taken back after the contract is signed regardless of whether or not the contract is subsequently dissolved.

(870) What is the Shariah position in regard to purchasing automobiles from a certain person with the understanding that he will serve as a paid agent for the sale of cars as well as act as guarantor for the buyers for any possible damages that may occur?

It is not permissible to appoint the same person as an agent and as a guarantor during the same time period.

(871) Is it permissible for the bank to offer incentives such as contests for prizes to every lessee who opens an account with the bank and gives it the right to deduct lease payments directly from these accounts?

It is permissible to offer incentives such as contests for permissible prizes to attract lessees to open accounts at the bank in order to have their lease payments deducted directly from them.

(872) Is it permissible for brokers to charge a fee for their service?

It is permissible for brokers and managers to charge a fee for their services, either as a pre-agreed fixed amount or as a pre-agreed percentage of the stock's price or the fund's net asset value.

(873) Is it obligatory to earn a halal income?

It is obligatory to earn a lawful income if one is unable to support oneself and one's dependents without doing so, though it is merely permissible if one is able to support oneself and one's dependents without earning.

(874) What must I do if I am unsure of the amount misappropriated?

If the one who misappropriated is unsure of the amount taken, it is recommended to estimate a bit on the higher side.

(875) Is it lawful for the bank to receive a commission for Takaful policies based on the number of policies taken out by clients having purchased cars through the bank?

It is lawful for the bank to receive a brokerage fee for serving as an intermediary between the client and the insurance company. This fee is linked directly to the amount of the bank's effort, ascertainable through the insurance documentation.

(876) Is it permissible for the bank to charge a fee for the services it provides such as money transfers. Will it be lawful for the bank to increase its fee for this service in proportion to the amount transferred?

It is permissible for the bank to charge a fee for services such as money transfers. The fee charged must be in proportion to the service being provided. Therefore, if the bank concludes that the costs differ with differences in the sums to be transferred, the bank may increase its fee with increases in the sums. If, however, the costs do not differ, then a higher fee for a larger sum may not be charged.

(877) May I trade like items sold by measurement?

It is permissible to transact any like goods sold by measurement or counting (e.g. one type of orange for another). It is not obligatory that they be equal weight, but they must be equal in measure or count, and the transaction must be conducted on spot.

(878) Is it permissible to accept compensation from a source whose earnings are unlawful?

It is impermissible to accept any form of compensation from a source when the recipient is certain that the very earnings used in the transaction were unlawfully gained; though if the recipient is doubtful about the unlawfulness of the earnings then taking compensation is permissible because one assumes that one takes from the lawful portion of the earnings.

(879) Is it permissible for a bank's client to authorize the bank or an employee of the bank as an agent to conclude a Murabaha transaction?

It is permissible for a bank's client to grant agency to the bank or any of its employees to conclude a Murabaha transaction between the bank and such client.

(880) At what stage does the liability of the bank as regards goods to be sold under a Murabaha contract end?

The liability of the bank as regards goods to be sold under a Murabaha contract ends once the goods are delivered to the client. In case of imported goods, the bank's liability ends once the goods arrive at the port and the client receives the shipping documents.

(881) In case goods imported by a bank under a Murabaha agreement are delivered before the shipping documents, is it permissible for the bank to deliver the goods to its client?

It is permissible for the bank to deliver the imported goods bought under a Murabaha agreement to the client in case they arrive before the shipping documents. In such a case, the bank is required to issue a customs clearance certificate to the client. In order for the issue of such a certificate to be valid, the following conditions should be met:

- The documentary credit should be in the name of the bank.
- The invoice should be in the name of the bank.
- The documentary credit should require the beneficiary to notify the bank of the details of the shipment and invoice.
- In case the client requests the issuance of customs clearance certificates while the bank has not received notification from the beneficiary, the bank will endeavor to obtain such notification. The customs clearance certificate should not be issued before the receipt of such notification, except to avoid imminent harm.

Furthermore, it is permissible in such a case to change the mode of sale from Murabaha to a bargaining sale. Since documents have not arrived and cost is not decisively known, both parties may bargain to a suitable price.

(882) Is it permissible to make the profit rate in a Murabaha contract contingent upon the period of repayment?

It is permissible to make profit contingent upon the repayment period. However, the amount of profit should be decided at the time of contracting. In other words, this entails that, at the time of contracting, the client be given an option of different repayment periods, each with different profit rates from which the client may select one.

(883) Is it permissible for a lessor to buy goods from a lessee under a Murabaha, with a bank as an intermediary?

Such a transaction is permissible in principle. However, it should be verified that the lessee is the actual owner of the goods being sold and that the actual transfer of goods takes place. Due to the sensitivity of such a transaction, it is strongly recommended that a Shariah opinion be sought on the actual contract in question.

(884) What is the preferred mode of delivery of goods bought under Murabaha to the client?

It is preferable for the bank to have its own storage space where the goods are stored up until they are delivered to the client. However, in the absence of such a facility, it is permissible for the bank to request the client to collect the goods from where the bank purchased them under an agency agreement.

(885) Is it permissible for a bank to contract a Murabaha in order to sell the client goods that are owned by the client himself?

A Murabaha is a sale in which the seller sells goods owned by him at a known cost plus profit. The transaction described in the question is not a valid Murabaha transaction. Furthermore, the said transaction is not valid in Shariah under any mode of financing, since it involves buying and selling for oneself, which is forbidden. It is among the essentials of a valid contract that there be two distinct and separate persons who transact in terms of offer and acceptance.

(886) What factors should the seller consider in determining the price of a Murabaha contract?

The Murabaha price is mutually agreed upon between the parties to the contract. The seller should honestly state the cost incurred in purchasing and acquiring the goods and should propose a fair profit margin that the buyer agrees to.

(887) Is it permissible for a bank to purchase goods requested by a Murabaha client without first executing the Murabaha contract?

It is necessary for the bank to first contract with its client to ensure the client's commitment to purchase the goods.

(888) In the event that the value of the damage to some Murabaha goods is insignificant, is it necessary for the bank to deduct the amount of damage from the price or is it sufficient to pay the purchase pledger the amount of recompense received from the Takaful company?

If credit is extended for a Murabaha deal, then it is necessary to deduct the amount of damage however insignificant, from the price in addition to paying the purchase pledger the amount of recompense received from the insurance company.

This is because a Murabaha is a sale of trust and the client must be informed of any change in price.

(889) Is it permissible to share in the business profits of a client who has been sold goods under a Murabaha which are essential in running that particular business?

It is impermissible to receive any share of the profits of a Murabaha client and it is not permissible to add any such clause in a Murabaha contract.

(890) Is it permissible to sell air tickets under a Murabaha contract?

It is permissible to sell air tickets under a Murabaha contract. It is best, however, to seek a Shariah opinion on the specific contract before its execution.

(891) Is it permissible for a bank's client to authorize the bank or an employee of the bank as an agent to conclude a Murabaha transaction?

It is permissible for a bank's client to grant agency to the bank or any of its employees to conclude a Murabaha transaction between the bank and such client.

(892) Is it permissible to stipulate that Murabaha installments be payable in foreign currency at the rate prevailing on the due date, in consideration of the fact that the bank has to pay for such goods in installments in foreign currency?

It is a condition for the validity of a contract that the contract price be known to both parties. In such a case, both the seller and buyer do not know the contract price, as it is contingent upon the currency rate prevailing in the future. Due to this and other ambiguities, such an arrangement is not permissible in the Shariah and should be avoided. Permissible alternatives to such a transaction would be:

- Executing and concluding Murabaha transactions in foreign currency. Foreign currency would be converted to the local currency on the date of purchase of goods from the exporter.

- To convert a Murabaha sale into a simple bargaining sale, where the bank estimates a price and enters into a contract with the customer based on this price. Later, this price can be changed with mutual consent of both contracting parties.

(893) A bank purchases an asset which is required to be registered with the government. Before such registration is completed, a client approaches the bank to buy such an asset under Murabaha. May the bank sell the asset even though it is not registered?

It is permissible to sell the asset in such a circumstance. The buyer may get the asset registered directly in his own name. However, it is imperative that the title of such an asset be in the name of the bank.

(894) A client approaches a bank and requests it to finance under a Murabaha contract goods bought by the client itself. The bank should pay the price of goods according to the invoice submitted by the client and charge the same to the client along with a profit margin. Is such a transaction permissible?

The described transaction is not a valid Murabaha transaction and, furthermore, is unlawful in the Shariah. A Murabaha entails selling a particular commodity that the seller owns, disclosing its cost and adding a profit margin mutually agreed upon by both parties. A Murabaha is not valid for goods that have neither been bought nor received by the seller nor are in his possession.

(895) In case some defect is discovered in goods to be sold under a Murabaha subsequent to signing the Murabaha contract, who is liable to make good the loss?

Any defect discovered in the goods is the liability of the seller. It is of no consequence if such defect is discovered subsequent to signing the Murabaha contract.

(896) Is it permissible to benchmark Murabaha installments on the market price of the goods prevailing at the due date of each installment?

It is not permissible to benchmark Murabaha installments on the current market price of goods. A Murabaha is a sale of goods in which the cost and profit is unambiguously decided at the time of contract.

(897) Is it permissible to impose a penalty on the promising buyer if he defaults in purchasing the goods he ordered?

Such a penalty is not permissible as it falls within the definition of riba. Instead, the bank may choose to sell the goods to another buyer, and recover from the promising buyer any expenses and depreciation in value of goods caused by his default.

(898) Is it permissible for a bank's client to authorize the bank or an employee of the bank as an agent to conclude a Murabaha transaction?

It is permissible for a bank's client to grant agency to the bank or any of its employees to conclude a Murabaha transaction between the bank and such client.

(899) A client approaches a bank to purchase goods under Murabaha. However, the client has a previous contract of purchase with the owner of the goods. May such a contract be unilaterally terminated by the client in order to proceed with the Murabaha contract?

Dealing with a client who has a previous contract with the owner of the goods depends on the nature of such a previous contract. If the contract is a general agreement and does not cover a specific transaction, then a Murabaha may be entered into. If, however, the contract is for a specific transaction, then this contract should be terminated before entering into a Murabaha transaction. As proof of termination, the client should provide the bank written evidence indicating that the client and owner of the goods have terminated their previous contract.

(900) What is the responsibility of the bank as regards purchase of goods under Murabaha?

The bank is bound to acquire the goods exactly as requested by the buyer. Due care and precaution should be exercised in buying the goods. The bank should obtain multiple quotations in order to obtain the best possible offer.

(901) Is it permissible to undertake a Murabaha transaction if the seller is not fully aware of the specifications of goods to be acquired and sold?

Goods should be thoroughly and unambiguously described in the contract of Murabaha. This should make the seller fully aware of what is to be sold. In case of any discrepancy in the goods, the buyer under Murabaha has the option to reject the goods and recover any amount paid.

(902) Is it permissible for a bank acquiring goods as a seller in a Murabaha to obtain insurance cover on such goods?

It is permissible to obtain insurance cover on goods to be sold under Murabaha, though it is not necessary in the Shariah. However, if the applicable laws and regulations make it mandatory to insure the goods, the bank should comply accordingly. It should be noted that irrespective of whether insurance cover has been obtained or not, the bank (seller) is responsible for any damage to the goods prior to delivery to the buyer.

(903) Is it valid to include in the Ijarah contract a promise from the lessee to purchase the leased asset at the end of the lease term?

A promise to purchase a leased asset should be kept independent of the contract of Ijarah. However, if done separately, it would be permissible to enter into this unilateral promise at the same time as the Ijarah.

(904) Is the Ijarah of an asset permissible when it does not provide any utility independently but is only used in conjunction with another asset?

It is permissible to lease assets that are not capable of giving benefit as independent units – such as machinery parts which do not function independent of the machine they belong to. However, if the lease is one that ends in ownership (Ijarah Muntahia Bittamleek), it would not be permissible to lease such assets.

(905) Is it permissible for the bank to lease automobiles to a company for a specified period of time on the condition that half the ownership of the automobiles will revert to the company after the lease period has been completed?

It is permissible for the bank to lease automobiles to the company however to revert half the ownership of the cars to the lessee company after completion of the lease period is subject to rules concerning the promise to purchase.

A new sales contract, separate and independent of the previous lease agreement, must be entered into in the event that the cars are to be sold.

(906) What is the Shariah perspective with regard to the bank leasing out shares in projects to its investors in return for a variable monthly or yearly lease?

The Shariah permits the bank to lease out its shares in projects to its investors in return for a variable monthly or yearly lease so long as it is against tangible assets such as real estate and equipment.

The bank must also ensure its understanding of the principles of lease and the benefit it may gain by making the monthly or yearly rent variable.

(907) What is a floating rental and what are the pre-requisites for charging it?

A floating rental in an Ijarah refers to charging different rentals for different periods within the term of an Ijarah contract based on a well known and acknowledged standard or benchmark. In order to float rentals:

- The rent for the first period must be known. For instance, in the case of a 5 year lease for which the rent is to be paid quarterly, the rent for the first quarter must be known. Rent for subsequent periods may be set as floating rentals.
- The floating rental must be linked to a well known and appropriate benchmark and should be subject to a floor and a cap. For example the floor may be set at 9% and the cap at 18%. The rent may be allowed to float within these two limits.
- The rent based on the benchmark, must be decided at the beginning of each period, not at its end.
- It may be that during the period of lease, the benchmark ceases to be a reference any more as a result of a shift in market preference. In order to deal with such a situation, it is decided at the time of the agreement that in such a case, a new benchmark will apply.

(908) What are the rights of the lessee in case the lessor refuses to repair the defects in the leased asset?

The lessee has the right to rescind the Ijarah contract in case the lessor refuses to repair any defects in the leased asset that occurred either after the contract date or were existing at the contract date but were unknown to the lessee.

(909) Is it permissible to include a clause in an Ijarah contract absolving the lessor of all responsibilities towards the leased asset such as maintenance?

It is not permissible to include provisions in an Ijarah contract that absolve the lessor from his responsibilities towards the leased asset.

(910) When is the Ijarah contract deemed to have terminated?

The Ijarah contract is deemed to have terminated either by the contractual terms, one of the party's rescission, or the termination of the possible usufruct of the leased asset through theft, destruction, or the like.

(911) What is the ruling with regard to the bank purchasing a leased asset?

It is permissible for the bank to purchase a leased asset that is already under lease.

The bank as the new owner assumes the responsibility of the owner's share of the maintenance which includes everything essential to the running condition of the leased item so that the usufruct it was contracted for remains available to the lessee.

(912) Is it lawful for the bank to sell leases considering these contracts represent financial rights?

It is not lawful for the bank to sell leases because it does not own the right to the usufruct of the leased goods which is the financial right possessed by the lessee during the period of the lease.

(913) Is it lawful for Islamic companies to lease equipment like airplanes and heavy machinery to other institutions for a certain period of time, i.e. ten years and then after two years, sell the equipment along with the leases to another company, all the while continuing to manage the equipment for the life of the leases, collecting the lease payments and delivering them to the new owners?

It is permissible for Islamic companies to purchase equipment that carries already concluded lease contracts for it.

The lease will continue for as long as was specified in the Ijarah agreement, which is a binding contract.

The first lessor is permitted to manage the equipment by collecting the payments from the lessee and guaranteeing that the lessee will honour his financial obligations.

(914) What is the obligation of the lessor to deliver the leased asset?

The lessor is obliged to deliver the asset and all associated leased items necessary to transfer the usufruct to the lessee and leave it to the lessee's disposal until the end of the lease term. Any accident that hampers the lessee from utilizing the usufruct—not being an accident caused by the lessee—must be corrected by the lessor.

(915) What is the liability of the lessor regarding defects in the leased asset existing on the contract date and known to the lessee?

The lessor is not obliged to repair any defects existing on the contract date and known to the lessee unless stipulated otherwise in the Ijarah contract.

(916) What is the liability of the lessee regarding damage to the leased asset?

The leased asset is in the possession of the lessee as a trust and damage resulting from the lessee's negligence is borne by the lessee.

(917) When is the Ijarah contract deemed to have terminated?

The Ijarah contract is deemed to have terminated either by the contractual terms, one of the party's rescission, or the termination of the possible usufruct of the leased asset through theft, destruction, or the like.

(918) Is it lawful for the bank to sell leases considering these contracts represent financial rights?

It is not lawful for the bank to sell leases because it does not own the right to the usufruct of the leased goods which is the financial right possessed by the lessee during the period of the lease.

(919) What recourse is available to the lessor if the lessee delays lease payments?

The lessor has the right to charge late payment fees. This charge may consist of an administrative charge and a late-payment penalty where administrative charges are the right of the lessor while the late-payment penalty is paid to a designated charity.

(920) May I create an Ijarah agreement of a consumable item?

The leased asset should not be a consumable item, like food, whose quantity reduces with consumption, but rather a durable, like machinery or property, whose market value might depreciate, but quantifiably remains the same.

(921) What are the ways by which the leased asset may be transferred to the lessee?

If a transfer of ownership is to take place at the end of an Ijarah, a document separate and independent of the Ijarah contract must be prepared.

The transfer of ownership may take place in one of the following three ways:

- 1) The lessee may undertake to buy the asset at the end of the period of lease for a certain amount that is mutually decided between both parties at the beginning of the contract. This amount may be the actual cost of the asset or any other nominal value.
- 2) The lessor may undertake to gift the asset to the lessee at the end of the Ijarah period.
- 3) The lessee may even purchase the asset during the period of the lease by making a complete payment of all the rentals owed by him or alternatively, the lessor may allow the lessee to purchase the asset at its market value.

(922) What is a time-share leasing contract and is it permissible?

A time-share lease contract is a permissible leasing structure where the lessor leases the same asset to multiple lessees for different time-periods, with none of the time periods overlapping with one another.

(923) What is said of trading rental claims without transferring the proportionate ownership of the leased asset?

Ownership, not the right to claim rent, represents the tradable portion of the certificate. The Shariah permits the trading of assets, not of money, for profit, and a rental claim is a receivable that represents money. So trading rental claims without first transferring ownership is forbidden. But it is acceptable for many buyers seeking ownership and many sellers seeking profit to trade Ijarah certificates like common securities in a capital market.

(924) In relation to the leased asset, what is the lessor responsible for?

With regards to the leased asset, the lessor is responsible for:

- The risk associated with the leased asset, during the entire period of lease, belongs to the lessor. It is the lessor's responsibility to replace the leased asset in case of any damage to it barring negligence on the part of the lessee.
- The major maintenance and insurance of the asset during the period of lease and the resulting expense is the lessor's responsibility entirely.
- At the time of the establishment of lease rentals, the lessor may cover his insurance cost, however, once the rentals have been fixed, any increase in the insurance premiums cannot be adjusted in the rental amounts to be paid by the lessee. The lessor will have to bear the additional insurance expense himself or adjust it to the rentals of the next ijarah term.
- The lessor may assume responsibility for insurance by making the client his agent to deal with the insurance company.

(925) Is there any difference between an invalid Ijarah contract and a void Ijarah contract?

Islamic jurists have not differentiated between the two. A contract is prohibited if it does not fulfill the requirements of the Shariah, and prohibition necessitates non-existence of the contract. In an invalid or void contract, if the lessee benefits from the usufruct, or if time elapses during which the leased asset could have been utilized, the lessee pays equivalent rent, assessed as being the rent of similar usufruct.

(926) Whose responsibility is it to pay for any legally required insurance and who is entitled to receiving any payout from the insurer?

The lessor is obligated to pay any legally required insurance on the leased property; any payout by the insurer should go to the lessor and the net amount (i.e. total payout less total premiums paid) should be given away in charity to avoid riba.

(927) Is the lessee obliged to pay lease rentals if the usufruct does not meet expectations?

The lessee is obliged to pay lease rentals as long as the usufruct of the leased asset is at his disposal. However, he reserves the right to rescind the contract in the event that the usufruct does not comply with the terms of the Ijarah contract, after which no monthly rentals are due.

(928) What is the liability of the lessee regarding damage to the leased asset?

The leased asset is in the possession of the lessee as a trust and damage resulting from the lessee's negligence is borne by the lessee.

(929) Will it be lawful to offer previously leased properties in an investment fund?

Leased properties are not suitable for offering in an investment fund since the usufruct of the real estate becomes the possession of the lessee with the signing of the lease contract and there is no way thereafter for the owner of the property to sell his share in the usufruct or for a partner to have a right to the earnings on his share of it.

This is because what the owner retains after the lease is the counter value of the usufruct or the debt that has become the liability of the lessee and it is not permissible to sell debt.

(930) Is the commencement of the lease, and the resultant rental obligation, according to usage or according to the terms of the contract?

The lease, and the resultant rental obligation on the lessee, commences according to the contract, not according to usage, provided the leased asset is usable at the time the lease period commences. If the rental period has begun, but the tenant has not begun using the property (provided the asset is available to use), the tenant is still obligated to pay rent.

(931) The bank leases land for the purpose of building a branch office. The improvements on the land and the construction of the branch office require two years before it can be opened for business. When is the bank required to begin lease payments on the land; from the time of possession or from the time the branch office is opened?

Payments are required from the lessee from the time of taking possession of the item leased from the lessor. In the case mentioned, payments will be due as soon as possession of the land is assumed by the lessee.

(932) May I defer payment or agree upon any rate when buying an item?

It is permissible to agree upon any rate of exchange or to defer payment when buying any item sold by weight, measurement or counting with cash, gold, or silver.

(933) May I defer payment or agree upon any rate when buying an item?

It is permissible to agree upon any rate of exchange or to defer payment when buying any item sold by weight, measurement or counting with cash, gold, or silver.

(934) May I deal in stolen property?

It is impermissible to deal in stolen property that one is certain is stolen; if there is doubt then it is permissible to deal in though it is always superior to avoid the doubtful.

(935) What is the Shariah ruling with regard to an agreement with a vendor in which he is required to inspect new cars for the bank and guarantee their operation for a certain period of time in return for charging a certain fee?

It is lawful that a fee be paid to a vendor for the inspection of the cars and their repair when they break down. On the other hand, an agreement that a certain amount will be given to him for guaranteeing any damage sustained by each car during a period of time in addition to his pledging to repair the same is a contract for something undefined and therefore invalid.

(936) Am I liable to return any wrongfully acquired property?

It is obligatory to return wrongfully taken property to the rightful owner as soon as one is able, even if at one's own expense assuming no harm comes to one's own or another's life or property. The one who misappropriated is obligated to make every kind of reasonable effort to return the property (or its equivalent market value, if applicable) to the rightful owner.

The one who misappropriated is obligated to return the very item that was taken, regardless of depreciation, unless the item was lost or destroyed ("destroyed" refers to extensive damage that seriously diminishes the usefulness of something), in which case he repays monetarily an amount equivalent to the market value of the item, even if he was not responsible for its loss or destruction.

(937) What does the Shariah say about begging?

Begging is offensive for those not in need, where a person in "need" is defined as one unable to feed oneself and one's dependents for a period of a day, whether due to an inability to earn a livelihood or because of physical incapacity caused by illness or old age. Further, it is offensive for the individual not in need to accept voluntary charity. For the individual unable to fulfill the basic requirement of feeding one's family for the day, begging is permissible. Begging while pretending to be needy is absolutely forbidden.

(938) May I compensate for misappropriation by returning the equivalent market value of the misappropriated item?

If the owner and the one who misappropriated both agree that the owner will take the equivalent market value of the misappropriated item rather than the item itself, the item becomes permissible for the one who misappropriated to keep and use. Market value is measured as the highest market price between the times of theft and loss, destruction or unavailability.

(939) Is it permissible for the merchant or the importer to pay the bank a 20% profit margin on the deal in order to guarantee the transfer of the value of the goods to the exporter within a month? If not, what is the Shariah compliant way of executing such a transaction?

It is not lawful for the importer to pay the bank 20% as profit margin on the deal in order to guarantee the transfer of the value of goods to the exporter as that would be analogous to the importer borrowing the price of the goods from the bank at that rate. The Shariah-compliant way of executing the transaction is by means of a Musharakah.

The bank becomes the merchant's partner in the ownership of goods by purchasing a portion of the goods in foreign currency. Thereafter, each has the right to contract for a commercial partnership which accords both partners the right to dispose of all the goods and share profits on the basis of an agreement between them. In this way the merchant is able to transfer the price of the goods to the exporter in foreign currency paid by the bank. If a loss occurs, it is absorbed by partners in proportion to their share of investment capital.

(940) In case local regulations require all banks to deposit a certain amount of money in a conventional bank at a specified interest rate, what does an Islamic bank do?

In such a case, the Islamic bank has the option of entering into a Mudarabah contract with the conventional bank. The Islamic bank assumes the role of investor, while the conventional bank is the working partner. The working partner invests the money contributed by the investor in lawful investments, and the proceeds are divided as per the Mudarabah contract.

(941) May I trade an item sold by weight with an item sold by measurement?

It is valid to trade an item customarily sold by weight with an item customarily sold by measurement or counting (or vice versa). It is permissible to agree upon any rate of exchange; it is a condition for the validity of such a trade that the items be of different categories.

(942) Is it lawful for the bank to accept the guarantee of an owner for a contractor constructing a building for the guarantor himself?

It is lawful for the bank to accept the guarantee of an owner for a contractor in the construction of something for the guarantor himself since the guarantor acts as a surety in relation to the work that is taking place between the contractor and the bank. The fact that the construction is undertaken in the guarantor's interest has no bearing on the matter.

(943) Is it permissible for brokers to charge a fee for their service?

It is permissible for brokers and managers to charge a fee for their services, either as a pre-agreed fixed amount or as a pre-agreed percentage of the stock's price or the fund's net asset value.

(944) What does the Shariah say regarding supporting male and female relatives?

One is obligated to support one's needy male relatives (i.e. brother, uncle, cousin, nephew, etc.) who are unable to support themselves as a result of an illness or disability, though if they are needy for reasons other than illness or disability supporting them is merely recommended; the proportion of their financial support in relation to one's direct dependents is the same as the proportion of their inheritance in relation to one's direct dependents.

One is also obligated to support one's needy unmarried female relatives (i.e. sister, aunt, cousin, niece, etc.) who are unable to support themselves regardless of the causes of their neediness; the obligation of supporting needy married females returns to the husband. The one supporting the relative is not entitled to claim any portion of the obligatory or non-obligatory maintenance that has already been provided.

(945) What are some lawful methods for paying trade bills?

The importer pays local currency to the bank in return for the purchase price at the time of payment. The bank accepts this amount until it has sufficient foreign currency in its reserves to purchase the foreign currency at the current rate of exchange.

If anything remains of the local currency, the bank returns it to the importer. If the amount is insufficient, the bank requests the importer to make up the difference. Thereafter, the foreign currency is transferred to the exporter.

Another permissible way of clearing payment is for the importer to pay local currency to the bank on the understanding that the payment is in return for the amount of obligation in foreign currency at the current rate. The bank receives this amount as the exporter's agent and the importer is cleared of responsibility. The exporter receives the full price of the goods through the bank which he may collect in local currency or alternatively have the bank as its agent convert it into foreign currency before making the transfer.

(946) May I keep any benefit derived from wrongfully taken property?

It is impermissible to keep for oneself the benefit derived from wrongfully taken property (e.g. profits from the sale of real estate purchased with wrongfully taken money); while the property should be returned to the owner, the resulting benefit should be distributed in charity. It is also impermissible to keep for oneself the benefit derived from property (e.g. profit) one does not own without the owner's permission, even if there is no intention to wrongfully take the property itself but to merely benefit from its usufruct (e.g. borrowing a vehicle, milking a cow or investing money without the owner's permission).

(947) May I defer payment when transacting an item sold by weight with an item sold by measurement?

It is permissible to defer payment (or exchange) when transacting items sold by weight with items sold by measurement or counting (or vice versa); it is a condition for the validity of such a trade that the items be of different categories.

(948) Some debtors have the ability to repay on time but continue to defer. Is the bank permitted to charge them a fee?

It is not lawful to charge anything above the due amount for a delay in repayment regardless of whether the delay is intentional or not. Instead the bank should seek legal recourse against the debtor and at the time of entering into the transaction should include a charity clause entitling the payment of penalties to a designated charity.

(949) Is it lawful to seek the return of a brokerage fee paid to a broker if the deal is dissolved after the contract is signed?

The amount paid as the brokerage fee is the right of the broker and may not be taken back after the contract is signed regardless of whether or not the contract is subsequently dissolved.

(950) Is it permissible for the bank to offer incentives such as contests for prizes to every lessee who opens an account with the bank and gives it the right to deduct lease payments directly from these accounts?

It is permissible to offer incentives such as contests for permissible prizes to attract lessees to open accounts at the bank in order to have their lease payments deducted directly from them.

(951) Is it lawful for the bank to receive a commission for Takaful policies based on the number of policies taken out by clients having purchased cars through the bank?

It is lawful for the bank to receive a brokerage fee for serving as an intermediary between the client and the insurance company. This fee is linked directly to the amount of the bank's effort, ascertainable through the insurance documentation.

(952) Is it obligatory to earn a halal income?

It is obligatory to earn a lawful income if one is unable to support oneself and one's dependents without doing so, though it is merely permissible if one is able to support oneself and one's dependents without earning.

(953) Am I liable to inform the owner of misappropriation of property upon its return?

When returning misappropriated property, it is not a condition that the taker inform the owner that the property had been misappropriated; rather, the property may be returned by any means possible, whether as a gift, secretly or openly, provided the one returning does not accept any form of consideration in return.

(954) Is it permissible for the bank to offer privileges to holders of certain types of accounts?

It is lawful for the bank to offer account holders, whether in general or only to a specific group, with special privileges such as gifts and prizes provided these privileges are not made conditional upon opening an account and are not mentioned at the time of opening an account.

(955) Is it permissible for the client in a Murabaha to determine the sort of Takaful coverage the goods are to receive, particularly when he wants to exclude coverage that raises the price of the premiums when such coverage might be important to the bank?

The client is not in a position to determine the type of coverage that will be sought for Murabaha goods purchased through the bank.

(956) Is it permissible to seek Takaful insurance for the value of goods plus 10% in order to include shipping expenses in addition to the cost of premiums?

Takaful coverage is not lawful for an amount greater than the actual value of goods. It should be a sum that represents actual value, inclusive of expenses

(957) Is it permissible for the bank to seek indemnity insurance policy covering risks such as theft, cash in transit, fraud, forged documents, valuables and the like?

It is permissible for the bank to seek Takaful against the types of losses mentioned so long as the amount of repayment does not exceed the amount of actual loss or damage.

(958) The value of certain possessions of the bank is greater at times and less at others; under these circumstances, which value should be used for the determination of the amount of insurance to be paid and what is the ruling with regard to payment of benefits?

The valuation of such possessions of the bank should be carried out when the Takaful contract is contracted for. The premiums must be determined based on this valuation and the benefits paid out must be commensurate to the amount of actual damage calculated based on the value of goods on the day the damage occurs.

(959) Is it permissible to seek Takaful insurance for the value of goods plus 10% in order to include shipping expenses in addition to the cost of premiums?

Takaful coverage is not lawful for an amount greater than the actual value of goods. It should be a sum that represents actual value, inclusive of expenses.

(960) Is it permissible for the client to have the goods he pledges to purchase by way of a Murabaha through the bank, insured at his own expense?

It is not lawful for the client to insure the goods at his own expense since the goods are the property of the bank. It is only permissible that he insure them in the capacity of the bank's agent with the understanding that he will recover the amount spent on insurance from the bank either by means of credit to his account or by having it deducted from the price of the goods in the Murabaha.

(961) Takaful insurance is purchased for a project to construct headquarters for a certain amount of premium giving coverage for labour and materials etc. Additional contracts are concluded with subcontractors for safety, electricity, air-conditioning and elevators based on the agreement that they will pay a part of the insurance premiums for the project each in proportion to the value of their work. In the event that the amount collected from them is greater than the cost of the premiums to be paid is it lawful for the bank to keep the excess amount?

It is not lawful for the bank to keep any amount in excess of the premiums to be paid; it must be returned to the subcontractors.

(962) Is it lawful for the bank to insure valuable property, like sums of cash, cheques and trade bills against fire, theft, loss or destruction?

It is permissible to insure such items on the condition that the amount of Takaful coverage is commensurate with the amounts of the trade bills and cheques etc, actually maintained in the safes of the bank so that the benefit payments to be made by the Takaful company are kept in proportion to the actual amount of loss and no more.

(963) Is it permissible to purchase healthcare insurance, keeping in view high healthcare costs?

It is not permissible to purchase insurance when one is not legally obligated to purchase insurance (e.g. for property, goods, travel); though healthcare costs in some countries are so high that scholars now permit one to purchase medical insurance provided there is no social healthcare program in one's country (e.g. United States), though scholars still deem healthcare insurance impermissible in those countries that provide social healthcare programs (e.g. Canada).

It is permissible to receive the benefits, including cash payment, of a health insurance plan if one's employer or government offers the plan as a part of their policy.

GLOSSARY

al-ajr	Refers to commission, fees or wages charged for services.
al-fard al-kifa'i	Lit. A collective duty of Muslims, the discharge of which by some of them absolves the rest of its performance, such as funeral prayers. Technically, it covers such functions which the community fails to or cannot perform and hence are taken over by the state, such as the provision of utilities, building of roads, bridges and canals.
al-wadia	Resale of goods with a discount on the original stated cost.
al-wakala	Absolute power of attorney.
amanah / amana	Lit: reliability, trustworthiness, loyalty, honesty. Technically, an important value of Islamic society in mutual dealings. It also refers to deposits in trust. A person may hold property in trust for another, sometimes by implication of a contract.
arboun / arbun	A non-refundable down payment for attaining the right to buy goods at a certain time and certain price in future; if the right is exercised, it becomes part of the purchase price.
awqaf / awqaf	A religious foundation set up for the benefit of the poor.
bai	Sale.
bai al-ina	This refers to the selling of an asset by the bank to the customer on a deferred payments basis, then buying back the asset at a lower price, and paying the customer in cash terms.
bai al-salam / bai salam / bai'salam	See 'salam'.

bai al-sarf	Exchange of currencies/monetary units either 'hand to hand/simultaneous on the basis of spot rate' (if different currencies are involved) or 'equal for equal as well as hand to hand' (if the monetary unit is the same on both sides).
bai bithaman ajil	Sale of goods on a deferred payment basis – credit sale; another term used for such sales is bai mu'ajjal. Equipment or goods requested by the client are bought by the bank which subsequently sells the goods to the client at an agreed price which includes the bank's mark-up (profit).
bai mu'ajjal	Lit: a credit sale. Technically, a financing technique adopted by Islamic banks. It is a contract in which the seller allows the buyer to pay the price of a commodity at a future date in a lump sum or in instalments. The price fixed for the commodity in such a transaction can be the same as the spot price or higher or lower than the spot price.
dirham	Name of a unit of currency, usually a silver coin, used in the past in several Muslim countries and still used in some Muslim countries, such as Morocco and United Arab Emirates.
fatwa / fatwah	A ruling made by a competent Shari'ah scholar on a particular issue, where fiqh (Islamic jurisprudence) is unclear. It is an opinion, and is not legally binding.
fiqh	Islamic jurisprudence. The science of the Shari'ah. It is an important source of Islamic economics.
fiqh al-mua'malat	Islamic commercial jurisprudence, jurisprudence of transactions.
gharar	Lit: uncertainty, hazard, chance or risk. Technically, sale of a thing which is not present at hand; or the sale of a thing whose consequence or outcome is not known; or a sale involving risk or hazard in which one does not know whether it will come to be or not.
Hadith	A record of the sayings, deeds or tacit approval of the Prophet Muhammad (PBUH).
Hajj	Hajj means pilgrimage to Mecca and other holy places. Hajj, the fifth pillar of Islam, is a duty on every Muslim who is financially and physically able to carry it out, at least once in his lifetime. There is a specific period for Hajj, namely one week from the 8th day of the Islamic month of Dhul Hijjah to the 13th day of that month in the Islamic lunar calendar.
halal	Activities which are permissible according to Shari'ah. The concept of halal has spiritual overtones. In Islam there are activities, professions, contracts and transactions which are explicitly prohibited (haram) by the Quran or the Sunnah. Barring

	<p>them, all other activities, professions, contracts, and transactions etc. are halal. This is one of the distinctive features of Islamic economics vis-à-vis Western economics where no such concept exists. In Western economics, all activities are judged on the touchstone of economic utility. In Islamic economics, other factors, mostly spiritual and moral are also involved. An activity may be economically sound but may not be allowed in the Islamic society if it is not permitted by the Shari'ah.</p>
Hanafi School of law	Islamic school of law founded by Imam Abu Hanifa. Followers of this school are known as Hanafis.
haram	Activities which are prohibited according to Shari'ah.
hawala	<p>Lit: bill of exchange, promissory note, cheque or draft.</p> <p>Technically, a debtor passes on the responsibility of payment of his debt to a third party who owes the former a debt. Thus the responsibility of payment is ultimately shifted to a third party.</p> <p>Hawala is a mechanism for settling international accounts, by book transfers. This obviates, to a large extent, the necessity of physical transfer of cash. The term was also used historically in public finance during the Abbaside period to refer to cases where the state treasury could not meet the claims presented to it and it directed the claimants to occupy a certain region for a specified period of time and procure their claims themselves by taxing the people. This method was also known as 'tasabbub'. The taxes collected and transmitted to the central treasury were known as 'mahmul', while those assigned to the claimants were known as 'musabbub'.</p>
hila (pl. hiyal)	Legal devices or tools used to avoid direct violation of Shari'ah and achieve a certain objective through lawful means.
ibaha	Lit: permissibility. Ibaha refers to the rule that every economic transaction is mubah (permissible) unless expressly and specifically forbidden by the Shari'ah.
ijara / ijarah	A leasing contract under which a bank purchases and leases out a building or equipment or any other facility required by its client for a rental fee. The duration of the lease and rental fees are agreed in advance. Ownership of the equipment remains in the hands of the bank.
ijara mawsufa fi al-dhimah	Shari'ah-compliant forward lease.
ijara sukuk / sukuk al ijara	A sukuk having ijara as an underlying structure.
ijara wa iqtina / ijara-wa-iktina	<p>The same as ijara except the business owner is committed to buying the building or equipment or facility at the end of the lease period. Fees previously paid constitute part of the purchase price. It is commonly used for home and commercial equipment financing.</p>
Ijma	Consensus of Shari'ah scholars on certain matters.

ijtihad / ijtehad	Lit: effort, exertion, industry, diligence. Technically, endeavour of a jurist to derive or formulate a rule of law on the basis of evidence found in various sources of Shari'ah.
istihsan	In Islamic jurisprudence, it refers to departure from the application of a ruling on an exceptional basis by taking a lenient view of an act that may otherwise cause unfairness or distress.
istijrar	A master agreement which facilitates purchasing of goods on ongoing basis without explicit offer and acceptance each time; the price is fixed either upfront or concluded after a predetermined period which is subject to certain conditions.
istisna	A contract of acquisition of goods by specification or order, where the price is fixed in advance, but the goods are manufactured and delivered at a later date. Normally, the price is paid progressively in accordance with the progress of the job.
istisna / istisna'a / istisnah / istisna'ah	A contract of acquisition of goods by specification or order, where the price is fixed in advance, but the goods are manufactured and delivered at a later date. Normally, the price is paid progressively in accordance with the progress of the job.
ju'alal / ju'ala	Lit: stipulated price for performing any service. Technically applied in the model of Islamic banking by some. Bank charges and commission have been interpreted to be ju'alal by the jurists and thus considered lawful.
kafala / kafalah	Lit: responsibility or suretyship. In kafalah, a third party becomes surety for the payment of debt. It is a covenant/pledge given to a creditor that the debtor will pay the debt or any other liability.
maysir / maisir	Gambling – a prohibited activity, as it is a zero-sum game just transferring the wealth not creating new wealth.
mu'amalat / mu'amalah	Lit: economic transaction. Technically, lease of land or of fruit trees for money, or for a share of the crop.
mudarabah / mudaraba / modarabah / modaraba	A form of business contract in which one party brings capital and the other personal effort. The proportionate share in profit is determined by mutual agreement at the start. But the loss, if any, is borne only by the owner of the capital, in which case the entrepreneur gets nothing for his labour.
mudarabah sukuk	A sukuk having mudarabah as an underlying structure.
mudarib	In a mudarabah contract, the person or party who acts as the entrepreneur.

mufti	An Islamic scholar, who interprets or expounds Islamic law and gives fatwa.
murabaha / murabahah / morabaha	A contract of sale between the bank and its client for the sale of goods at a price plus an agreed profit margin for the bank. The contract involves the purchase of goods by the bank which then sells them to the client at an agreed mark-up. Repayment is usually in instalments.
murabaha, commodity	A murabaha contract using certain specified commodities, through a metal exchange.
musaqat / musaqah	A contract in which the owner of the garden shares its produce with another person in return for his services in irrigating the garden.
musharakah / musharaka	An agreement under which the Islamic bank provides funds which are mingled with the funds of the business enterprise and others. All providers of capital are entitled to participate in the management but not necessarily required to do so. The profit is distributed among the partners in predetermined ratios, while the loss is borne by each partner in proportion to his contribution.
musharakah, diminishing	An agreement which allows equity participation and sharing of profit on a pro rata basis, but also provides a method through which the bank keeps on reducing its equity in the project and ultimately transfers the ownership of the asset to the participants.
muzara'a	It is a contract in which one person agrees to till the land of the other person in return for a part of the produce of the land.
nisab	Exemption limit for the payment of zakat. It is different for different types of wealth.
qard hasan / qard al hasana / quard hasana / quard al hassan	An interest-free loan given for either welfare purposes or for fulfilling short-term funding requirements. The borrower is only obligated to pay back the principal amount of the loan.

qimar	Lit: gambling. Technically, an agreement in which possession of a property is contingent upon the occurrence of an uncertain event. By implication it applies to those agreements in which there is a definite loss for one party and definite gain for the other without specifying which party will gain and which party will lose.
rab-al-maal rahan	In a mudarabah contract the person who invests the capital. collateral; technically, it means to pledge or lodge a real or corporeal property of material value as security for a debt or pecuniary obligation so as to make it possible for the creditor to recover the debt, in case of non-payment, by selling the pledged property.
Ramadan	It is the ninth month of Islamic calendar, during which Muslims fast; it is also a time for reflection, intensive prayer and self-restraint.
retakaful	Reinsurance based on Islamic principles. It is a mechanism used by direct insurance companies to protect their retained business by achieving geographic spread and obtaining protection, above certain threshold values, from larger, specialist reinsurance companies and pools.
riba	Lit: increase or addition. Technically it denotes any increase or addition to capital obtained by the lender as a condition of the loan. Any risk-free or 'guaranteed' rate of return on a loan or investment is riba. Riba, in all forms, is prohibited in Islam. Usually, riba and interest are used interchangeably.
riba al-buyu	A sale transaction in which a commodity is exchanged for the same commodity but unequal in amount and the delivery of at least one commodity is postponed. To avoid riba al-buyu, the exchange of commodities from both sides should be equal and instant. Riba al-buyu was prohibited by the Prophet Muhammad to forestall riba (interest) from creeping into the economy from the back door.
riba al-diyun	Usury of debt.
riba al-fadl	Usury of trade. It is an alternative term for riba al-buyu.
riba al-nasiah	Increment on the principal of a loan payable by the borrower. It refers to the practice of lending money for any length of time on the understanding that the borrower would return to the lender at the end of this period the amount originally lent together with an increment in consideration of the lender having granted him time to pay. The increment was known as riba al-nasia. It was in vogue in Arabia in the days of the Prophet Muhammad.
ruq'a	Banking instrument of the early Muslim period. It was a payment order to draw money from the bank.

sadaqah	Charitable giving.
salam / bai al-salam / bai salam / bai'salam	Salam means a contract in which advance payment is made for goods to be delivered later on.
salat / salah	The five daily prayers, practiced by Muslims in supplication to Allah s.w.t.
Shari'ah / Sharia / Shariah / Syaria / Syari'ah / Syar'a	Refers to the laws contained in or derived from the Quran and the Sunnah (practice and traditions of the Prophet Muhammad (PBUH)).
Shari'ah board	An authority appointed by an Islamic financial institution, which supervises and ensures the Shari'ah compliance of new product development as well as existing operations.
shirkah	A contract between two or more persons who launch a business or financial enterprise to make profit.
shirkatulaqd	A contract between two or more persons who launch a business or financial enterprise to make profit. Generally it is termed as 'shirkah'.
shirkatulmilk	Partnership by ownership, which could be automatic as in the case of inheritance by eg two brothers, or optional such as two persons purchasing a property jointly (not for a commercial purpose).
suftaja / suftajah / suftajal	A type of banking instrument used for the delegation of credit during the Muslim period, especially the Abbasides period. It was used to collect taxes, disburse government dues and transfer funds by merchants. It was the most important banking instrument used by traveller merchants. In some cases suftajas were payable at a future fixed date and in other cases they were payable on sight. Suftaja is distinct from the modern bill of exchange in some respects. Firstly, a sum of money transferred by suftaja had to keep its identity and payment had to be made in the same currency. Exchange of currencies could not take place in this case. Secondly, suftaja usually involved three persons. 'A' pays a certain sum of money to 'B' for agreeing to give an order to 'C' to pay back to 'A'. Third, suftajas could be endorsed. The Arabs had

	been using endorsements (hawala) since the days of the Prophet Muhammad.
sukuk	Similar characteristics to that of a conventional bond with the key difference being that they are asset backed; a sukuk represents proportionate beneficial ownership in the underlying asset. The asset will be leased to the client to yield the return on the sukuk.
Sunnah	It refers to the sayings and actions attributed to Prophet Muhammad (PBUH).
ta'awuni	A principle of mutual assistance.
tabarru	A donation covenant in which the participants agree to mutually help each other by contributing financially.
takaful	A form of Islamic insurance based on the Quranic principle of mutual assistance (ta'awuni). It provides mutual protection of assets and property and offers joint risk sharing in the event of a loss by one of its members.
tamlik	Transfer of ownership of a property.
tawaruq / tawarruq	A sale of a commodity to the customer by a bank on deferred payment at cost plus profit. The customer then sells the commodities to a third party on a spot basis and gets instant cash.
ujra	Charge (fee or commission) for use of services.
Ummah	The diaspora or 'Community of the Believers' (ummat al-mu'minin), the world-wide community of Muslims.
Umrah / Umra	Lit: visiting or attending. It is a mini-pilgrimage to Mecca which is not compulsory, but highly recommended, and can be performed at any time of the year.
usufruct	A legal right to use and derive profit from property belonging to someone else provided that the property itself is not damaged.
wa'ad	A promise to buy or sell certain goods in a certain quantity at a certain time in future at a certain price. It is not a legally binding agreement.
wakala / wakalah	A contract of agency in which one person appoints someone else to perform a certain task on his behalf, usually against a certain fee. The agent (wakil) is allowed to generate an income for himself in excess of the

	minimum agreed upon returns as agreed with rab-al-maal (investor of the capital).
wakil	In a wakala contract, a representative (agent), who acts on behalf of the principal/investor.
waqf / wakf	An appropriation or tying-up of a property in perpetuity so that no propriety rights can be exercised over the usufruct. The waqf property can neither be sold nor inherited nor donated to anyone.
zakat / zakah	An obligation on Muslims to pay a prescribed percentage of their wealth to specified categories in their society, when their wealth exceeds a certain limit. Zakat purifies wealth. The objective is to take away a part of the wealth of the well-to-do and to distribute it among the poor and the needy.

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